713.

# SUPREME COURT OF THE UNITED STATES.

## No. 41.

## CHARLES SCOTT, BAILIFF OF WM. S. MOORE, PLAINTIFF IN ERROR,

VERSUS

## JOHN LLOYD.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

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Know all men by these presents that we, William A. Bradley and Frederick May, are held and firmly bound unto the Washington, Alexandria, and Georgetown Steam Packet Company, in the full and just sum of five thousand dollars, current money, to be paid to the said the Washington, Alexandria, and Georgetown Steam Packet Company, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 6th day of January, eighteen hundred and thirty-four. Whereas, lately at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit depending in the said circuit court, wherein the said the Washington, Alexandria, and Georgetown Steam Packet Company were plaintiffs, and the said William A. Bradley was defendant, judgment was rendered against the said William A. Bradley, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation to the said the Washington, Alexandria, and Georgetown Steam Packet Company, citing and admonishing them to be and appear at a Supreme Court on the second Monday of January instant.

Now the condition of the above obligation is such, that if the said William A. Bradley shall prosecute said writ to effect, and answer all damages and costs, if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

W. A. BRADLEY, [SEAL.]
FRED. MAY, [SEAL.]

Signed, sealed, and delivered, in presence of
Jos. INGLE.
Jos. H. BRADLEY.

Approved 6th January, 1834. J. S. MORSELL.
True copy. Test: W. BRENT, *Clerk*.

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DISTRICT OF COLUMBIA, *sct.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-sixth day of the same month, in the year of our Lord one thousand eight hundred and thirty-two, and of the Independence of the United States of America the 57th: Style of court.

*Were Present*

The hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, and JAMES S. MORSELL, *Asst. Judges.*
HENRY ASHTON, Esquire, *Marshal.*
WILLIAM BRENT, *Clk.*

In the record of proceedings of the same court, among others, is the following, to wit:

JOHN LLOYD
*vs.*
CHARLES SCOTT, BAILIFF OF WILLIAM S. MOORE. } Parties.

Be it remembered, that heretofore, to wit, at the December term of this court, in the year of our Lord one thousand eight hundred and thirty, the said John Lloyd, by Thomas Swann, esquire, his attorney, and Charles Scott, bailiff of William S. Moore, by Walter Jones, esquire, his attorney, filed in the court here, the record of proceedings had in this cause in the county of Alexandria, in the words and figures following, to wit: Appearance of parties and record from Alexandria county

Record from Alexandria county. DISTRICT OF COLUMBIA, *to wit:*

JOHN LLOYD, Plaintiff,
*vs.*
CHARLES SCOTT, BAILIFF OF WM. S. MOORE, Defendant, } *In Replevin.*

Be it remembered, that on the 18th day of March, 1825, come the aforesaid John Lloyd, and sued out of the office of the clerk of the United States' circuit court, of the District of Columbia for the county of Alexandria, a certain writ of replevin against the said Charles Scott, "bailiff of William S. Moore;" which said writ is in the words and figures following:

Writ of replevin. DISTRICT OF COLUMBIA, *to wit:*

Seal of Alexandria co., D. Columbia. *The United States of America to the Marshal of the District of Columbia,* GREETING:

If John Lloyd shall make you secure, you are hereby commanded that, justly, and without delay, you cause to be replevied to him, three dining tables, eighteen mahogany chairs, twelve windsor chairs, two couches, one bedstead, four beds and matrass, one negro woman named Sylvia, her child Jane, and one negro man named William; which Charles Scott, "bailiff of William S. Moore," lately took, and unjustly detained against gages and pledges, as it is said, and after him justly to be deduced that no more clamor we may hear for defect of justice, and that you summon the said Charles Scott, to appear before the honorable the judges of the United States' circuit court of the District of Columbia for the county of Alexandria, at the court-house in the town of Alexandria, at the next court to answer the wrongful taking the said property. Damages one thousand dollars. And have then and there this writ.

Witness William Cranch, esquire, chief judge of our said court, this 18th day of March, in the year of our Lord 1825.

EDM. I. LEE, *Clk.*

Marshal's return. Executed 19th March, 1825, on Charles Scott, bailiff of William S. Moore, and the property within named delivered over to John Lloyd.

D. MINOR, *Dept. for*
T. RINGGOLD, *Marshal.*

Replevin bond. Know all men by these presents, that we, John Lloyd and Edmund I. Lee, are held and firmly bound unto Tench Ringgold, marshal of the District of Columbia, in the full and just sum of one thousand dollars, to the payment of which we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this eighteenth day of March, 1825.

The condition of the above obligation is such, that whereas the above bound John Lloyd hath this day sued out of the clerk's office of the circuit court of the District of Columbia, for the county of Alexandria, the United States writ of replevin, thereby commanding the marshal of the said District to replevy to him, three dining tables, eighteen mahogany chairs, twelve windsor chairs, two couches, one bedstead, four beds and matrass, one negro woman named Sylvia, her child Jane, and one negro man named

William, which "Charles Scott, bailiff of William S. Moore," lately took and distrained in the said county for rent supposed to be due to the said William S. Moore. Now if the said John Lloyd, his heirs, executors, and administrators, do, and shall well and truly, perform and satisfy the judgment of the circuit court of the District of Columbia, for the county of Alexandria, in the said suit of replevin, in case the above bound John Lloyd shall be cast on the trial of the same, then the above obligation to be void, or else to remain in full force, power, and virtue.

JOHN LLOYD. [SEAL.]
EDM. I. LEE. [SEAL.]

Sealed and delivered in presence of
M. BAYLY, jr.

Cause continued, May and June, 1825.

And at the rules held in the clerk's office, for the months of May and June in the same year, this cause was continued.

Rule nar, and continuance, July 1825.

At another day, to wit, at the rules held in the clerk's office of the said court, for the month of July, came the defendant aforesaid, by Robert J. Taylor, esq., his attorney, and a day is thereupon given the plaintiff, until the next rules to file his declaration, and the same day is given the defendant, there, &c., and cause continued.

August rules, 1825, continued.

September rules, 1825.

At the rules held for the month of September, came the plaintiff by Thomas Swann, esq., his attorney, and filed there his declaration against the said defendant; which declaration is in the words following, to wit:

COUNTY OF ALEXANDRIA, *to wit:* Nar.

John Lloyd complains of Charles Scott, in custody, &c., of a plea, for that the said Charles, on the day of , in the year of our Lord one thousand eight hundred and twenty-four, at the county aforesaid, took the goods and chattels, following, of the said plaintiff, to wit, three dining tables, eighteen mahogany chairs, twelve windsor chairs, two couches, one bedstead, four beds and matrass, one negro woman named Sylvia, her child Jane, and one negro man named William, and detained them against gages and pledges, until, &c., whereby the said John saith he is injured, and hath sustained damages to the value of one thousand dollars, therefore he brings suit, &c.

SWANN, *for the Plaintiff.*

J. DOE, } *Pledges, &c.*
R. ROE, }

Judgment by default, nisi.

And the defendant having been arrested and failing to appear, on the motion of the plaintiff, by his attorney, it is ordered, that judgment be entered for the plaintiff against the defendant for what damages the plaintiff hath sustained by occasion of the trespass in the declaration mentioned, unless the defendant shall appear, and plead to issue, at the next rules.

Judgment by default confirmed.

And at the rules held in the clerk's office of the said court, for the month of October, in the same year, the defendant still failing to appear, on motion of the plaintiff, by his attor-

ney, it is ordered, that the last order made against him in this cause, be confirmed, and that the plaintiff's damages be assessed by a jury at the next term.

1827, November, deft. appears and files. Plffs. special demurrer, joinder and four pleas filed.

And at a court continued, and held for the district and county aforesaid, the 30th day of November, 1827, (until which time this cause had been regularly continued,) came the defendant, by his attorney, and filed his avowry; and, thereupon, the plaintiff filed a special demurrer to the said avowry, and the defendant joins in the said demurrer and four pleas filed; all which are as follows:

Defendant's avowry.

Charles Scott, bailiff, &c., at suit, John Lloyd; and the said Charles Scott, by Robert J. Taylor, his attorney, comes and defends the force and injury, when, &c.; and as bailiff of William S. Moore, well acknowledges the taking of the said goods and chattels, in the said place, when, &c., and justly, &c.; because, he says, that before the said time when the said, the taking of the said goods and chattels, is supposed to have been made, one Jonathan Scholfield was seized in his demesne in fee of four brick tenements, and a lot of ground, whereon they stood, on the east side of Washington street, and north side of Duke street, in the town of Alexandria, and county aforesaid, whereof the said place, when, &c., is, and at the said time, when, &c., was parcel, and being so seized, as aforesaid, of the said tenements, and lot of ground, he the said Jonathan and Eleanor his wife, afterwards, and before the said time, when, &c., to wit, on the eleventh day of June, 1814, at the county aforesaid, by their certain indenture dated on the said 11th day of June, 1814, and here now to the court shown, in consideration of the sum of five thousand dollars by the said William paid to the said Jonathan, granted, bargained, and sold to the said William, one certain annuity or yearly rent of five hundred dollars, to be enuring out of, and charged upon, the said four brick tenements and lot of ground, whereof the said place, when, &c., is parcel, to be paid to the said William, his heirs and assigns, by equal half yearly payments of two hundred and fifty dollars each, on the 10th day of December, and on the 10th day of June, in every year for ever thereafter. To hold the said annuity or rent, so as aforesaid charged and payable, to the said William S. Moore, his heirs and assigns, to his and their only proper use for ever; and the said Jonathan Scholfield, for himself, his heirs, and assigns, did by the said indenture, among other things, covenant with the said William S. Moore, his heirs and assigns, that he, the said Jonathan Scholfield, his heirs and assigns, would well and truly satisfy and pay to the said William S. Moore, his heirs and assigns, the said annual rent of five hundred dollars, by equal half-yearly payments, as aforesaid, for ever, and that if the said rent should not be punctually paid as it became due, then that on every such default, it should be lawful for the said William S. Moore, his heirs and assigns, from time to time, to enter on the said four tenements and lot of ground, so as aforesaid charged, of which the said place, when, &c., is parcel, and to levy by distress and sale of the goods and chattles there found, the rent in arrear, and the costs of distress and sale; of which said rent, so as aforesaid granted, the said William became and was seized under the said deed, and by the perception thereof, that is to say, on the eleventh day of December, in the year 1814, at the county aforesaid, and has since remained, and yet is seized thereof.

And afterwards, that is to say, on the 29th day of October, in the year 1816, at the county aforesaid, the said Jonathan Scholfield and Eleanor, his wife, by their certain deed of bargain and sale, under their seals, dated on the day and year last mentioned, bargained, sold, and conveyed to the said John Lloyd, his heirs and assigns for ever, certain tenements and lots of ground, in the said town of Alexandria, whereof the said four brick tenements and lot of ground before mentioned, including the said place where, &c., is and was parcel, subject by the terms of the said deed to the payment of the said annuity or rent of five hundred dollars to the said William S. Moore, his heirs and assigns, under, and in virtue of which said bargain, sale, and conveyance to him, the said John entered upon the said tenements and lots of ground so to him bargained, sold, and conveyed, of which the said place where, &c., is, and was parcel, and became thereof seized and possessed, that is to say, on the said 29th day of October, in the year 1816, at the county aforesaid, and ever since has continued, and yet is so seized and possessed; and became, after the said bargain, sale, and conveyance, to the said plaintiff as aforesaid, and after his entry, seizen, and possession of the premises, including the said place where, &c.; and whilst he so continued seized and possessed as aforesaid, the sum of two hundred and fifty dollars of the annuity or rent aforesaid, for the half year ending on the 10th day of June, in the year 1824; and the further sum of two hundred and fifty dollars of the said annuity or rent, for the half year ending on the 10th day of December, in the year 1824, became and remained in arrear and unpaid to the said Williams S. Moore, he, the said Charles Scott, as bailiff of the said William, and by his command and authority at the said time when, &c., entered on the said place where, &c., being parcel of the said four brick tenements and lot of ground, so as aforesaid charged, with the said annuity or rent, and liable to the distress of the said William, and took and carried away the said goods and chattels in the declaration mentioned, then and there being found in the said place where, &c., parcel of the said four tenements and lot of ground, as a distress for the said rent so in arrear as aforesaid, to the said William, as he lawfully might, and this he is ready to verify, &c.: wherefore the said Charles prays judgment for the sum of one thousand dollars, being double the value of the said rent so in arrear and distrained for as aforesaid, with full costs of suit, &c., according to the statute in that case provided.

R. J. TAYLOR, *for Defl.*

*Special Demurrer and Joinder not on file.*

And the said John, by Thomas Swann, his attorney, prays 1st Plea.
oyer of the said indenture from the said Jonathan Scholfield and Eleanor, his wife, to the said William S. Moore, in the said cognizance mentioned, and the same is read to him in these words, to wit: (Copied in page 15,) which being read and heard, the said John saith that the said Charles, as bailiff of the said William S. Moore, for the reasons before alleged, ought not justly to acknowledge the taking of the goods and chattels aforesaid, in the said place, in which, &c., because he saith that before the making of the said indenture, that is to say, on the eleventh day of June, in the year 1814, at the county aforesaid, it was *corruptly agreed* between the said Jonathan Scholfield and the said William S. Moore, that the said William S. Moore should *advance* to him the said Jonathan, the sum of five

thousand dollars; and, in consideration thereof, that he the said Jonathan and the said Eleanor, his wife, should grant, by a deed of indenture, duly executed and delivered to him, the said William, his heirs and assigns for ever, a certain annuity or rent of five hundred dollars to be issuing out of, and charged upon a lot of ground and four brick tenements, and appertenances thereon erected, on the east side of Washington street, and on the north side of Duke street, in the town of Alexandria, bounded as follows: beginning at the intersection of said streets; thence north, on Washington street, eighty-seven feet, more or less, to the partition wall between the fourth and fifth tenements from Duke street; thence, east parallel to Duke street and with said partition wall one hundred and twelve feet to an alley; thence with the line of the said alley eighty-seven feet to Duke street; thence on Duke street, west, to the beginning; to be paid to the said William, his heirs and assigns, by equal half yearly payments of two hundred and fifty dollars, on the tenth day of December, and on the tenth day of June for ever thereafter. And it was *further corruptly agreed*, that he the said Jonathan, in and by the said deed of indenture, should, for himself, his heirs, executors, administrators, and assigns, covenant with the said William, his heirs and assigns, that he would well and truly pay to him, the said William, his heirs and assigns, the said annuity or rent of five hundred dollars by equal half yearly payments, on the tenth day of June, and tenth day of December, in each year, for ever thereafter, as the same should become due; and that if the same should not be punctually paid, that then it should be lawful for the said William, his heirs and assigns, from time to time, on every such default, to enter on the premises charged, and to levy by distress and sale of the goods and chattels there found, the rent in arrear, and the costs of distress and sale; and if the same should remain in arrear and unpaid for the space of thirty days after any day of payment as aforesaid, and no distress sufficent to satisfy the same could be found on the premises, that then it should be lawful for the said William, his heirs and assigns, to enter upon the premises charged, and from thence to remove and expel the said Jonathan, his heirs and assigns, and to hold and enjoy the same as his and their absolute estate for ever thereafter; and it was *further corruptly agreed* between the said Jonathan and him, the said William that he the said Jonathan should enter into these further covenants in the said indenture, that is to say, a covenant that he the said Jonathan, at the time of the execution of the said indenture, was then, in his own right, seized in fee simple in the premises charged, free from any condition or encumbrance, other than such as were specified in a deed from the said Jonathan to Robert J. Taylor, dated the day of ; and that he the said Jonathan, his heirs and assigns, would, for ever thereafter, keep the buildings which then were, or thereafter might be, erected on the premises charged, fully insured against fire in some incorporated insurance office, and would assign the policies of insurance to such trustee as the said William, his heirs or assigns, might appoint, to the intent that if any damage or destruction from fire should happen, that the money received on such policies might be applied to rebuilding or repairing the buildings destroyed or damaged; and that he the said Jonathan, his heirs and assigns, would execute and deliver any further conveyance which might be necessary, more completely to charge the premises before mentioned with the annuity aforesaid, and to carry into full effect the intention of the said parties; and, lastly, that he and his heirs would for ever warrant and defend the annuity or rent so agreed, to be granted to the said William, his heirs and assigns,

against any defalcations and deductions for, or on account of, any act of him, his heirs or assigns; and the said William did further corruptly agree that he would, in the said indenture, covenant for himself, his heirs and assigns, with the said Jonathan, his heirs and assigns, that if the said Jonathan, his heirs or assigns, should at any time thereafter, at the expiration of five years from the date of the said indenture, pay to the said William, his heirs or assigns, the sum of five thousand dollars, together with all arrears of rent, and ratable dividend of the rent for the time which should have elapsed between the half year's day then next preceding, and the day on which such payment should be made, he the said William, his heirs and assigns, would execute and deliver any deeds or instruments which might be necessary for releasing and extinguishing the rent or annuity thereby agreed to be created, which, on such payments being made, should for ever after cease to be payable.

And the said John saith that afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, the said William, in pursuance and in prosecution of the said corrupt agreement, did advance to the said Jonathan the said sum of five thousand dollars; and the said Jonathan and Eleanor, his wife, and the said William, did then and there make, seal, and duly deliver to each other, respectively, the said deed of indenture, as their several acts and deeds, which said deed was duly acknowledged by the said Eleanor, and admitted to record. And so the said John saith that the said deed of indenture, in the said cognizance mentioned, was made in consideration of money advanced upon and for usury; and that by the said indenture there has been reserved and taken above the rate of six dollars in the hundred, for the forbearance of the said sum of five thousand dollars so advanced as aforesaid, for the term of one year; and that the said John is ready to verify: whereupon he prays judgment. If he ought to be charged with the rent aforesaid, by virtue of the indenture aforesaid, and for as much as the said Charles hath acknowledged the taking of the said goods and chattels, he, the said John, prays judgment and his damages, on occasion of the taking and unjust detaining of the said goods and chattels to be adjudged to him, &c.

LLOYD *vs.* SCOTT, BAILIFF, &c. } 2d plea.

And the said John, by Thomas Swann, his attorney, prays oyer of the deed of indenture from the said Jonathan Scholfield and Eleanor, his wife, to the said William S. Moore in the cognizance mentioned, and the same is read to him in these words, to wit: (Copied in page 85.) Which being read and heard, the said John, for further plea, saith, that the said Charles, as bailiff of the said William S. Moore, for the reasons before alleged, ought not justly to acknowledge the taking of the goods and chattels aforesaid, in the said place in which &c.; because, he said, before the making of the said indenture, that is to say, on the eleventh day of June, in the year 1814, at the county aforesaid, it was corruptly agreed between the said Jonathan Scholfield and the said William S. Moore, that he, the said William S. Moore, should lend to him the said Jonathan the sum of five thousand dollars, and in consideration thereof, that he the said Jonathan and the said Eleanor, his wife, by a deed of indenture duly executed and delivered, should grant to him, the said William, his heirs and assigns for ever, a certain annuity or rent of five hundred dollars, to be issuing out of and charged upon

a lot of ground and four brick tenements and appertenances thereon erected, on the east side of Washington street, and on the north side of Duke street, in the town of Alexandria, bounded as follows: beginning at the intersection of said streets; thence north, on Washington street, eighty-seven feet, more or less, to the partition wall between the fourth and fifth tenements from Duke street; thence east, parallel to Duke street, and with said partition well, one hundred and twelve feet to an alley; thence, with the line of the said alley, eighty-seven feet to Duke street; thence on Duke street to the beginning, to be paid to the said William S. Moore, his heirs and assigns, by equal half yearly payments of two hundred and fifty dollars, on the tenth day of December and the tenth day of June, for ever thereafter. And it was *further corruptly* agreed that he the said Jonathan, in and by the said deed of indenture, should, for himself, his heirs, executors, administrators, and assigns, covenant with the said William, his heirs and assigns, that he would well and truly pay to him, the said William, his heirs and assigns, the said annuity or rent of five hundred dollars, by equal half yearly payments, on the tenth day of June and tenth day of December, in each year for ever thereafter, as the same should become due; and that if the same should not be punctually paid, that then it should be lawful for the said William, his heirs and assigns, from time to time, on every such default, to enter on the premises charged, and to levy by distress and sale of the goods and chattels there found, the rent in arrear, and the costs of distress and sale; and if the same should remain in arrear and unpaid for the space of thirty days, after any day of payment as aforesaid, and no distress, sufficient to satisfy the same could be found on the premises, that then it should be lawful for the said William, his heirs and assigns, to enter upon the premises charged, and from thence to remove and expel the said Jonathan, his heirs and assigns, and to hold and enjoy the same as his and their absolute estate for ever thereafter. And it was further corruptly agreed between the said Jonathan and him the said William, that he the said Jonathan should enter into those further covenants in the said indenture, that is to say, a covenant that he the said Jonathan, at the time of the execution of the said indenture, was there in his own right seized in fee simple in the premises charged, free from any condition or encumbrances other than such as were specified in a deed from the said Jonathan to Robert J. Taylor, dated the tenth day of June, 1814; and that he the said Jonathan, his heirs and assigns would, for ever thereafter keep the buildings which then were, or thereafter might be, erected on the premises charged, fully insured against fire, in some incorporated insurance office, and would assign the policies of insurance to such trustee as the said William, his heirs or assigns might appoint, to the intent that if any damage or destruction from fire should happen, that the money received on such policies might be applied to rebuilding or repairing the buildings destroyed or damaged; and that he the said Jonathan, his heirs and assigns, would execute and deliver any further conveyance which might be necessary more completely to charge the premises before mentioned with the annuity aforesaid, and to carry into full effect the intention of the said parties; and, lastly, that he and his heirs would for ever warrant and defend the annuity or rent so agreed to be granted to the said William, his heirs and assigns, against any defalcations and deductions for or on account of any act of him, his heirs or assigns. And the said William did further corruptly agree that he would, in the said indenture, covenant for himself, his heirs and assigns, with the said Jonathan, his heirs and assigns, that if the

said Jonathan, his heirs or assigns should, at any time thereafter, at the expiration of five years from the date of the said indenture, pay to the said William, his heirs or assigns the sum of five thousand dollars, together with all arrears of rent and ratable dividends of the rent for the time which should have elapsed between the half year's day then next preceding, and the day on which such payment should be made, he the said William, his heirs and assigns, would execute and deliver any deed or instruments which might be necessary for releasing and extinguishing the rent or annuity thereby agreed to be created, which, on such payments being made, should for ever after cease to be payable.

And the said John saith that afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, the said William, in pursuance and in prosecution of the said *corrupt* agreement, did advance to the said Jonathan the said sum of five thousand dollars, and the said Jonathan and Eleanor, his wife, and the said William, did then and there make, seal, and duly deliver to each other respectively the said deed of indenture as their several acts and deeds, which said deed was duly acknowledged by the said Eleanor, and admitted to record. And so the said John saith, that the said deed of indenture in the said cognizance mentioned was made in consideration of money lent upon and for usury, and that by the said indenture, there has been reserved and taken above the rate of six dollars in the hundred, for the forbearance of the said sum of five thousand dollars so lent as aforesaid, for the term of one year, and this the said John is ready to verify: wherefore he prays judgment. If he ought to be charged with the rent aforesaid, by virtue of the indenture aforesaid, and inasmuch as the said Charles hath acknowledged the taking of the said goods and chattels, he the said John prays judgment and his damages, on occasion of the taking and unjust detaining of the said goods and chattels, to be adjudged to him, &c.

3d plea.

And the said John, by Thomas Swann, his attorney, prays oyer of the deed of indenture from the said Jonathan Schol-field and Eleanor, his wife, to the said William S. Moore in the said cognizance mentioned, and the same is read to him in these words, to wit: (Copied in page 85.) Which being read and heard, the said John, for further plea, saith that the said Charles, as bailiff of the said William, for the reasons before alleged, ought not justly to acknowledge the taking of the said goods and chattels aforesaid in the said place in which, &c.; because, he saith, that before the making of the said indenture, that is to say, on the eleventh day of June, in the year, 1814, at the county of Alexandria aforesaid, it was corruptly agreed between the said Jonathan and the said William, that he the said William should advance to him the said Jonathan the sum of five thousand dollars upon the terms and conditions and in consideration of the covenants and agreements in the said indenture mentioned and contained, and that in pursuance of the said corrupt agreement, and in the prosecution and fulfilment of the same, the said William did then and there advance to him the said Jonathan the said sum of five thousand dollars; and the said Jonathan and Eleanor, his wife, and the said William did then and there make, and seal, and duly deliver the said deed of indenture to each party respectively, as their act and deed. And so the said John saith that the said deed of indenture was made in consideration of money advanced upon, and for usury; and that by the said indenture there has been reserved and taken above the rate of six dollars in the hundred, for the for-

bearance of the said sum of five thousand dollars so advanced as aforesaid, for the term of one year, and this the said John is ready to verify: wherefore he prays judgment. If he ought to be charged with the rent aforesaid, by virtue of the indenture aforesaid, and inasmuch as the said Charles hath acknowledged the taking of the said goods and chattels, he the said John prays judgment and his damages, on occasion of the taking and unjust detaining of the said goods and chattels, to be adjudged to him, &c.

4th plea. And the said John, by Thomas Swann, his attorney, prays oyer of the deed of indenture from Jonathan Scholfield and Eleanor, his wife, to the said William S. Moore in the said cognizance mentioned, and the same is read to him in these words, to wit: (Copied in page 85.) Which being read and heard, the said John, for further plea, saith, that the said Charles, as bailiff of the said William, for the reasons before alleged, ought not justly to acknowledge the taking of the said goods and chattels in the said place in which, &c.; because, he saith, that before the making of the said indenture, that is to say, on the eleventh day of June, one thousand eight hundred and fourteen, at the county of Alexandria aforesaid, it was corruptly agreed between the said Jonathan and the said William, that he the said William should lend to him the said Jonathan the sum of five thousand dollars, upon the terms and conditions and in consideration of the covenants and agreements in the said indenture mentioned and contained, and that in pursuance of the said corrupt agreement, and in prosecution and fulfilment of the same, the said William did then and there lend to the said Jonathan, the said sum of five thousand dollars; and the said Jonathan and Eleanor, his wife, and the said William did then and there make, and seal, and duly deliver the said deed of indenture, to each party, respectively, as their act and deed, and so the said John saith that the said deed of indenture was made in consideration of money lent upon and for usury; and that by the said indenture there has been reserved and taken above the rate of six dollars in the hundred, for the forbearance of the said sum of five thousand dollars, *so lent as aforesaid*, for the term of one year, and this the said John is ready to verify: wherefore he prays judgment. If he ought to be charged with the rent aforesaid, by virtue of of the indenture aforesaid, and inasmuch as the the said Charles hath acknowledged the taking of the said goods and chattels, he the said John prays judgment and his damages, on occasion of the taking and unjust detaining of the said goods and chattels to be adjudged to him, &c.

April term, 1828. Rule on defendant to reply to pleas. And at another day, to wit, at a court held for the district and county aforesaid, the 14th day of April, 1828, on the motion of the plaintiff, by his attorney, it is ordered, that the avowant, do, on and before Monday the 21st day of this month, reply to the pleas filed by the said John Lloyd, in this case, at the last term.

At another day, to wit, at a court continued and held, for the district and county aforesaid, the 16th day of April, 1828, "came the parties, by their attorneys; and thereupon the plaintiff's demurrer to the defendant's avowry being argued, it seems to the court that the matters, in the said avowry contained, are sufficient in law to bar the plaintiff from having his action against the defendant.

Judgment for defendant on avowry.

November, 1828. Demurrer to pleas.

And at another day, to wit, at a court continued and held, for the district and county aforesaid, the 15th day of November, 1828, the defendant filed a special demurrer to each of the pleas filed by the plaintiff, and the plaintiff joins in the said demurrer.

*(Demurrer not on file.)*

And at a court continued and held, for the district and county aforesaid, the 25th day of November, 1828, "came the parties, by their attorneys; and thereupon the matters of law arising upon the defendant's demurrer to plaintiff's pleas being argued, it seems to the court that the said pleas, and the matter therein contained, are not sufficient in law to bar the defendant from acknowledging the taking of the said goods and chattels, in the said place, where, &c., as bailiff of the said William S. Moore; and it appearing to the court, on the trial of this suit, that the rent distrained for is justly due to the said William S. Moore, it is therefore considered that the said John Lloyd take nothing by his suit aforesaid, but for his false clamors therein be in mercy, &c. And that the said Charles Scott, for the use of the said William S. Moore, and as his bailiff, go thereof without day, and recover from the plaintiff the sum of one thousand dollars, being double the value of the rent distrained for, with full costs of suit, &c.

Judgment for defendant on demurrer to pleas.

Plaintiff's costs $21 00
Defendant's costs 10 75.

April term, 1830. Mandate from Supreme Court filed.

At another day, to wit, at a court continued and held, for the district and county aforesaid, the 20th day of April, 1830, a mandate from the Supreme Court was presented and received by the court, and ordered to be filed. And in pursuance of the order of the Supreme Court in the said mandate contained, the court doth now overrule the demurrer of the defendant, to the second and fourth pleas by the plaintiff pleaded to the said defendant's cognizance, and on the said defendant's motion, leave is given him to withdraw the said demurrers, and reply de novo to the said second and fourth pleas; and time is given the defendant to file such replications, until the first day of August next.

Demurrer to 2 and 4 pleas overruled.

Leave to withdraw demurrer and reply de novo.

*(Mandate copied in page 90.)*

Nov. term, 1830. Demurrer withdrawn, and general replication and issue.

At a court continued and held, for the said district and county, November 27th, 1830. The general demurrer withdrawn, and general replication to second and fourth pleas and issue; and on the application of the defendant, this cause is removed to Washington county, and it is ordered, that the clerk do transmit a transcript of the record of proceedings, together with the original papers, to the clerk of the circuit court for the county of Washington.

And cause removed to Washington co.

Commissions awarded to either party to take depositions.

And at a court continued and held for said district and county, the 29th day of November, 1830. By consent of parties commissions are awarded to either party to take the depositions of the witnesses of either party, upon giving five days' notice of the time and place of taking the same.

A copy. Test:

EDM. I. LEE, *Clk.*

Venire ordered by consent.

Thereupon it was ordered by the court here, with the consent of the said parties, by their attorneys aforesaid, that a jury thereon appear before the court here, on the first Monday of May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the said parties then and there, &c.

May term, 1831. Appearance of parties.

And now, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, comes again into the circuit court here, as well the said John Lloyd, by his attorney aforesaid, as the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid.

Order to empannel jury.

Whereupon, for trying the issues aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors, returned to the court here by the marshal, be drawn, by ballot, according to the law in such cases made and provided; thereupon the twenty persons being so drawn, and written on two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jurors' names.

1. Thomas Hyde,
2. Lewis Smith,
3. Clement McWilliams,
4. Paul Stevens,
5. Thomas Fenwick,
6. Joseph Cooper,
7. Samuel P. Lowe,
8. Thomas Marshall,
9. David Butler,
10. Henry McPherson,
11. Judson Mitchell,
12. Richard Harrison,

Jury empannelled and sworn.

who, being empannelled and sworn to say the truth in the premises. Whereupon for certain reasons as well to the court here, as to the parties aforesaid appearing, the said Thomas Hyde, one of the jurors of the jury above-mentioned from the pannel aforesaid, is withdrawn, by consent of the said parties, and by order of the court here, and the rest of the jurors of that jury are wholly discharged from given any verdict of and upon the premises aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, with the consent of said parties, by their attorneys aforesaid, and by order of the court here, is continued until the first Monday of December next.

Juror withdrawn.

And cause continued.

December term 1831. Appearance of parties.

And now, to wit, the said first Monday of December, in the year of our Lord one thousand eight hundred and thirty-one, comes again into the circuit court here, as well the said John Lloyd, by his attorney aforesaid, as the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, with consent of the said parties, by their attorneys aforesaid, and by order of the court here, is continued until the first Monday of May next.

Cause continued.

May term, 1832. Appearance of parties.

And now, to wit, the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-two, comes again into the circuit court here, as well the said John Lloyd, by his said attorney, as the said Charles Scott, bailiff of

William S. Moore, by his said attorney; whereupon, for trying the issues aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors, returned to the court here by the marshal, be drawn, by ballot, according to the law in such cases made and provided; thereupon the twenty persons being so drawn, and written on two lists, one of which said lists was delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from said lists, the remaining twelve persons being called, come, to wit: Order to empannel jury.

| | | Jurors. |
|---|---|---|
| 1. Henry Holmead, | 7. John B. Boone, | |
| 2. William Lowry, | 8. Jacob Noyes, | |
| 3. William Magee, | 9. Singleton Townsend, | |
| 4. Robert H. Clements, | 10. John M. Millard, | |
| 5. William Hebb, | 11. Philip Hines, | |
| 6. Elisha D. Berry, | 12. Thomas Burch, | |

who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that they find the issues in fact joined in this cause for the plaintiff; and that the rent distrained for, and claimed in the cognizance or avowry in this cause, was not, nor is not, in arrear and unpaid, nor was, nor is any part of it in arrear to the said William S. Moore, as the said John Lloyd above in pleading hath alleged; and they assess the damages of the said John Lloyd, by reason of the taking and unjustly detaining of the goods and chattels aforesaid, to the sum of one cent current money: whereupon the said John Lloyd, by his said attorney, prays judgment against the said defendant of and upon the verdict aforesaid, by the jurors aforesaid, given in form aforesaid; and the said Charles Scott, bailiff of William S. Moore, by his said attorney, saith that the court here ought not to proceed to render judgment upon the said verdict, and prays that the said verdict may be set aside, and that the issues aforesaid may be tried anew by other jurors, to be afresh empannelled; and files in court here the following reasons, to wit: Jury sworn. Verdict for plaintiff. Motion for new trial.

LLOYD vs. SCOTT. } *Reasons for new trial.* Reasons.

1st. Because the court misdirected the jury as to the law applicable to the case.

2d. Because the jury misconceived the instructions given by the court to the jury.

3d. Because the verdict was against law.

4th. Because the verdict was against the evidence.

5th. Because the verdict was without evidence.

COX, *for Defendant.*

*June 12th*, 1832.

Whereupon all and singular the premises being seen, heard, and after argument of counsel, and the matter being fully understood, and mature deliberation being thereupon had, for that it appears to the court here, that the verdict aforesaid, be set aside and held as entirely void and of no force or effect, and that the issues aforesaid be tried anew by other jurors, to be afresh empan- Verdict set aside, and new trial granted.

nelled; it is thereupon considered by the court here that the said John Lloyd recover against the said Charles Scott, bailiff of William S. Moore, the sum of $ for his costs and charges by him expended at this term by occasion of the premises and trial aforesaid. Therefore let a new jury thereon appear here on the fourth Monday of November next, by whom, &c., and who neither and so forth, to recognize and so forth, because as well and so forth, and the same day is given to the said parties then and there and so forth.

Cause continued.

Nov. term, 1832. Appearance of parties.

Order to empannel a jury.

And now, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, comes into the circuit court here, as well the said John Lloyd, by his attorney aforesaid, as the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid. Whereupon, for trying the issues aforesaid, it is ordered by the court here, that twenty persons, from the pannel of petit jurors, returned to the court here by the marshal, be drawn, by ballot, according to the law in such cases made and provided; thereupon the twenty persons being so drawn and written on two lists, one of which said lists was delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jurors' names.

1. John D. Clark,
2. Charles Wood,
3. Philip Williams,
4. Robert Coltman,
5. Nathan W. Fales,
6. Henry Barron,
7. William Orme,
8. Thomas Beall,
9. Gideon Davis,
10. Edward N. Roach,
11. George Lamb,
12. Peter Griffin,

Jury sworn. Verdict for plaintiff.

who, being empannelled and sworn to say the truth in the premises, upon their oath, do say that they find the issues in fact joined in this cause for the plaintiff; and that the rent distrained for and claimed in the cognizance or avowry in this cause, was not in arrear and unpaid, nor was any part of it in arrear and unpaid to the said William S. Moore, as the said John Lloyd above in pleading hath alleged, and they assess the damages of the said John Lloyd by reason of the taking and unjustly detaining of the goods and chattles aforesaid, to the sum of one cent current money. Therefore it is considered by the court here, that he said John Lloyd have the goods and chattels in the said declaration mentioned to be held by him irrepleviable for ever; and it is also considered by the court here, that the said John Lloyd recover against the said Charles Scott, bailiff of William S. Moore, as well the sum of one cent current money, his damages aforesaid by the jurors aforesaid, in form aforesaid assessed, as also the sum of two hundred fifty-one dollars and fifteen cents, ($251 15,) by the court here, unto him on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said Charles in mercy and so forth.

Judgment on verdict.

Memorandum.

MEMORANDUM.—Before the jurors last aforesaid withdrew from the bar of the court here, the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid, filed in court here the following bill of exceptions, to wit:

The plaintiff, to support the issues on his part above joined, produced, as a witness to be sworn and examined in this cause, the said Jonathan Scholfield, above-mentioned and described in the pleadings, and in the deed therein mentioned and above set forth, upon oyer of the same, prayed by the plaintiff. Whereupon the said defendant and avowant, objecting to the competency and admissibility of said Scholfield as such witness, and further to impeach his competency as such witness, gave in evidence and showed to the court here, the several documents and facts following, to wit: Defendant's 1st exception.

The deed of bargain and sale from said Scholfield and Eleanor, his wife, to plaintiff, dated twenty-ninth October, eighteen hundred and sixteen, (being the same above-mentioned in the said cognizance or avowry,) *prout* the same hereto annexed. No. 1. (Copied in page 60.) Under which deed the plaintiff entered, and has continued, seized, and possessed from the date, of the said premises in the said avowry or cognizance described.

A written notice from said Scholfield to plaintiff, dated June ninth, eighteen hundred and twenty-four, which was duly served on plaintiff by direction of said Scholfield, on the same day, together with the affidavit of the service of the same by one Charles Scott. Prout No. 2, hereto annexed. (Copied in page 68.)

An assignment from said Scholfield to one Thomas K. Beale, dated eighteenth November, eighteen hundred and twenty-six. Prout No. 3, hereto annexed. (Copied in page 69.)

A copy of the foregoing assignment, with a written notice at the foot thereof, which was duly served on plaintiff on the twentieth day of November, eighteen hundred and twenty-six, together with the affidavit of the service of the same by one John Beale. Prout No. 4, hereto annexed. (Copied in page 70.)

A deed of assignment from said Scholfield to said T. K. Beale, dated twentieth November, eighteen hundred and twenty-six. Prout No. 5, hereto annexed. (Copied in page 71.)

Exemplification (duly certified and authenticated according to the act of Congress) of the record of the proceedings in the county court of Fairfax, Commonwealth of Virginia, (where said Scholfield then resided,) upon the insolvency and discharge of said Scholfield, as an insolvent debtor, in May, eighteen hundred and twenty-two, pursuant of the act of the Virginia Assembly in such case provided. Prout No. 6, hereto annexed. (Copied in page 73.)

Whereupon the plaintiff, to support the competency of Scholfield as such witness, produced and showed to the court here, the several documents following, to wit:

A release from said Scholfield to plaintiff, dated thirteenth day of June, eighteen hundred and thirty-one. Prout (A) hereto annexed. (Copied in page 77.)

A release from the same to the same, dated twenty-fifth April, eighteen hundred and twenty-eight. Prout (B) hereto annexed. (Copied in page 79.)

A release from Thomas K. Beale and James M. McRae to said Scholfield, same date. Prout (C) hereto annexed. (Copied in page 80.)

A release from Josesph Smith to said Scholfield, same date. Prout (D) hereto annexed. (Copied in page 81.)

nelled; it is thereupon considered by the court here that the said John Lloyd recover against the said Charles Scott, bailiff of William S. Moore, the sum of $ for his costs and charges by him expended at this term by occasion of the premises and trial aforesaid. Therefore let a new jury thereon appear here on the fourth Monday of November next, by whom, &c., and who neither and so forth, to recognize and so forth, because as well and so forth, and the same day is given to the said parties then and there and so forth.

Cause continued.

Nov. term, 1832. Appearance of parties.

Order to empannel a jury.

And now, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, comes into the circuit court here, as well the said John Lloyd, by his attorney aforesaid, as the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid. Whereupon, for trying the issues aforesaid, it is ordered by the court here, that twenty persons, from the pannel of petit jurors, returned to the court here by the marshal, be drawn, by ballot, according to the law in such cases made and provided; thereupon the twenty persons being so drawn and written on two lists, one of which said lists was delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jurors' names.

1. John D. Clark,
2. Charles Wood,
3. Philip Williams,
4. Robert Coltman,
5. Nathan W. Fales,
6. Henry Barron,
7. William Orme,
8. Thomas Beall,
9. Gideon Davis,
10. Edward N. Roach,
11. George Lamb,
12. Peter Griffin,

Jury sworn. Verdict for plaintiff.

who, being empannelled and sworn to say the truth in the premises, upon their oath, do say that they find the issues in fact joined in this cause for the plaintiff; and that the rent distrained for and claimed in the cognizance or avowry in this cause, was not in arrear and unpaid, nor was any part of it in arrear and unpaid to the said William S. Moore, as the said John Lloyd above in pleading hath alleged, and they assess the damages of the said John Lloyd by reason of the taking and unjustly detaining of the goods and chattles aforesaid, to the sum of one cent current money. Therefore it is considered by the court here, that he said John Lloyd have the goods and chattels in the said declaration mentioned to be held by him irrepleviable for ever; and it is also considered by the court here, that the said John Lloyd recover against the said Charles Scott, bailiff of William S. Moore, as well the sum of one cent current money, his damages aforesaid by the jurors aforesaid, in form aforesaid assessed, as also the sum of two hundred fifty-one dollars and fifteen cents, ($251 15,) by the court here, unto him on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said Charles in mercy and so forth.

Judgment on verdict.

Memorandum.

MEMORANDUM.—Before the jurors last aforesaid withdrew from the bar of the court here, the said Charles Scott, bailiff of William S. Moore, by his attorney aforesaid, filed in court here the following bill of exceptions, to wit:

The plaintiff, to support the issues on his part above joined, produced, as a witness to be sworn and examined in this cause, the said Jonathan Scholfield, above-mentioned and described in the pleadings, and in the deed therein mentioned and above set forth, upon oyer of the same, prayed by the plaintiff. Whereupon the said defendant and avowant, objecting to the competency and admissibility of said Scholfield as such witness, and further to impeach his competency as such witness, gave in evidence and showed to the court here, the several documents and facts following, to wit: Defendant's 1st exception.

The deed of bargain and sale from said Scholfield and Eleanor, his wife, to plaintiff, dated twenty-ninth October, eighteen hundred and sixteen, (being the same above-mentioned in the said cognizance or avowry,) *prout* the same hereto annexed. No. 1. (Copied in page 60.) Under which deed the plaintiff entered, and has continued, seized, and possessed from the date, of the said premises in the said avowry or cognizance described.

A written notice from said Scholfield to plaintiff, dated June ninth, eighteen hundred and twenty-four, which was duly served on plaintiff by direction of said Scholfield, on the same day, together with the affidavit of the service of the same by one Charles Scott. Prout No. 2, hereto annexed. (Copied in page 68.)

An assignment from said Scholfield to one Thomas K. Beale, dated eighteenth November, eighteen hundred and twenty-six. Prout No. 3, hereto annexed. (Copied in page 69.)

A copy of the foregoing assignment, with a written notice at the foot thereof, which was duly served on plaintiff on the twentieth day of November, eighteen hundred and twenty-six, together with the affidavit of the service of the same by one John Beale. Prout No. 4, hereto annexed. (Copied in page 70.)

A deed of assignment from said Scholfield to said T. K. Beale, dated twentieth November, eighteen hundred and twenty-six. Prout No. 5, hereto annexed. (Copied in page 71.)

Exemplification (duly certified and authenticated according to the act of Congress) of the record of the proceedings in the county court of Fairfax, Commonwealth of Virginia, (where said Scholfield then resided,) upon the insolvency and discharge of said Scholfield, as an insolvent debtor, in May, eighteen hundred and twenty-two, pursuant of the act of the Virginia Assembly in such case provided. Prout No. 6, hereto annexed. (Copied in page 73.)

Whereupon the plaintiff, to support the competency of Scholfield as such witness, produced and showed to the court here, the several documents following, to wit:

A release from said Scholfield to plaintiff, dated thirteenth day of June, eighteen hundred and thirty-one. Prout (A) hereto annexed. (Copied in page 77.)

A release from the same to the same, dated twenty-fifth April, eighteen hundred and twenty-eight. Prout (B) hereto annexed. (Copied in page 79.)

A release from Thomas K. Beale and James M. McRae to said Scholfield, same date. Prout (C) hereto annexed. (Copied in page 80.)

A release from Josesph Smith to said Scholfield, same date. Prout (D) hereto annexed. (Copied in page 81.)

A release from William Veitch and Benoni Wheat to said Scholfield, same date. Prout (E) hereto annexed. (Copied in page 82.)

An agreement of the plaintiff (same date) to secure to the persons therein named certain proportions of the sum in controversy in this suit upon a certain contingency, &c. Prout (F) hereto annexed. (Copied in page 83.)

A release from plaintiff to said Scholfield, same date. Prout (G) hereto annexed. (Copied in page 84.)

Upon consideration of all which documents and facts, so produced and shown on both sides as aforesaid, and of the objections of the said defendant and avowant to the competency and admissibility of said Scholfied as a witness on the part of the plaintiff in this cause, the court decided that he was competent as such witness, and he was accordingly sworn and examined. To which said defendant and avowant excepts, and prays that this his bill of exceptions be sealed, &c., and it is done accordingly, this 31st day of December, 1832.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

Statement of evidence to precede defendant's 2, 3, and 4 bills of exceptions.

The plaintiff, in replevin, to support the issues on his part above joined, produced and read in evidence to the jury, the deed between Jonathan Scholfield and Eleanor, his wife, and William S. Moore, dated 11th June, 1814, as above set out in the pleadings, on the oyer prayed. (Copied in page 85.)

Which being read, the counsel for the plaintiff, in replevin, then produced Alexander Moore, a competent witness sworn in the cause, who testified as follows:

Alex. Moore's testimony.

That he knew William S. Moore, of Alexandria county, very well, in the year eighteen hundred and fourteen, and previous to that time; that in the year eighteen hundred and fourteen, and previously, he the said William S. Moore was a sugar-refiner, and that before he left Alexandria, he sold out his sugar bakery; and the witness does not know, except from common report, what was his course of business afterwards; that he was generally believed, though the fact was not within the knowledge of the witness, to have the command of a good deal of money; he had also the reputation of being a money lender; a great deal of money was about that time loaned on ground rent in Alexandria, and a good deal in other ways; does not know that said William S. Moore made any purchases of real property in Alexandria after he sold out his sugar bakery; and does not know that he purchased any ground rents otherwise than by seeing the deeds to him on record, of which he had seen several. The witness knew Jonathan Scholfield many years; always understood he built the row of houses now owned by Lloyd, the plaintiff; that he was an active, enterprising man of business; that he afterwards became embarrassed in his circumstances. Witness had no knowledge whatever of the transactions of William S. Moore, in the purchase of ground rents, except casually seeing the deeds on record. Witness knew nothing of the transaction now in question, but by the same means. Witness knew nothing by report or otherwise of said William S. Moore being money-lender, except the information derived from seeing the deeds above alluded to, for ground rents. Witness was at that time a broker, in considerable business and much acquainted with the transactions of loans, and never knew or heard

of any loan of money by William S. Moore, except in the way of ground rents, such as is reserved in the deed just read in this case, which transaction, as it appears in the deed itself, he understands to be a loan, and from the reputation of Mr. William S. Moore's dealings in ground rents, such as the one above-mentioned. If the transaction in said deed can be considered a loan, then he should consider said William S. Moore a money-lender from his dealings in that way. He thinks he has heard said William S. Moore spoken of in Alexandria as a money-lender.

Jonathan Scholfield's testimony.

Jonathan Scholfield, another witness sworn and examined on the part of the plaintiff, testified as follows:

In June, 1814, I applied to William S. Moore to raise or borrow $5,000, securing him on an annuity or ground rent for one year. He objected to that, and said he would let me have it for ten years, giving him the same security. His proposition I objected to, and insisted on a shorter time—he on a longer. After much discussion in which I proposed shorter periods, between one and five years, and he on longer, we agreed to split the difference and fix it at five years that I was to keep the money, giving him the same security. My first proposition was to allow him ten per cent., and secure it by an annuity or ground rent on the houses mentioned in the deed; no other interest but ten per cent. was mentioned. I don't recollect stating to him why I wanted the money, only that I wanted to raise so much money.

The plaintiff's counsel then put to said witness the following question: "Did you, in the course of your discussions, as to the time you were to keep the money, state your object in the application to be to have the use of the $5,000 for a limited time?"

To which defendant's counsel objected as being a leading interrogatory; the plaintiff's counsel then varied the question as follows:

Did you or did you not, in the course of your discussions, as to the time you were to keep the money, state your object in the application to be to have the use of the $5,000 for a limited time?

To which defendant's counsel made the same objection; but the court overruled the objection, and permitted the question to be put; and defendant excepts to that decision. To which question the witness answered. I don't recollect particularly stating it; the nature of the transaction answers the question; as I wished to have the privilege of returning the money as soon as possible, and he insisted I should not in less than ten years.

The first conversation with William S. Moore, on this subject was, I think, at his, Moore's sugar-house; after the first conversation I met him at Mr. Taylor's office for the purpose of having the papers drawn, and had them drawn there; this was either the second or third meeting I had with Moore on the subject; my impression is that there was some consultation, between Moore and R. J. Taylor, on the subject; and my impression is that I got it from Moore himself that he wished to consult R. J. Taylor; the terms of the contract must have been stated to Mr. Taylor as he drew the deed; which was agreeable to our agreement; and he must have got the terms, from our statement made to him, of our agreement.

My impression is that the terms had been agreed on, as to the time I was to have the privilege of returning the money, before we saw R. J. Taylor, and that it was mentioned to him that I was to keep the money five years, and then have the privilege of returning it, and not to have the privilege of returning it before. I got the $5,000 and executed the deed; I think I got

a check on the Bank of Potomac, and if I did, I got the money for it: the houses were encumbered at the time of this negotiation, but the encumbrance was taken off before the deed to Moore was executed; the encumbrance was to Andrew Scholfield for about 10 or 12 thousand dollars. The encumbrance to A. Scholfield was again put upon the same property, and A. Scholfield's encumbrance was postponed to Moore's. The four houses in the deeds of Moore, when first finished, rented for $400 each; such is my impression, but I am not certain, as I had sold them before they were quite finished; and by the terms of the sale, I was to finish them, and did finish them.

When you made the application to Mr. Moore, did you represent yourself to him, as desiring to make a disposal of your property, or of any interest in it, by way of sale?

Answer. I think the nature of the transaction will answer the question; as there was so much conversation between us about the time I was to have the privilege of redeeming, it was clear I had no intention to dispose finally of the property.

Cross-examination. *(Jonathan Scholfiela's cross-examination.)*

The point of difference between Moore and myself was pretty much confined to the time of redemption. My proposition was that I should be at liberty to redeem after one year, and until redeemed the ten per centum was to be paid him.

I do not recollect having any conversation with Mr. Taylor on the subject, until I met him with Moore, or by appointment to meet Moore at his office, nor have I any recollection of any conversation with Taylor prior to seeing Moore; I might have had some, but do not recollect it; my first application was made to Moore personally, without the intervention of Taylor; do not recollect applying to Mr. Taylor to procure the money I wanted; I have no recollection of applying to him, except for the purpose of drawing the papers between myself and Moore.

The encumbrance to Andrew Scholfield was on the property when I sold to Lloyd. I think it was two or three years after the deed to Moore when I sold to Lloyd; the houses were not at the time finished or tenantable.

I believe that in Mr. Taylor's presence every thing connected with the transaction was mentioned by one or the other party. My impression, derived I think from Moore, was, that he wanted to see Taylor and consult him before the agreement was concluded; but whether any such consultation took place in my presence I cannot say.

Cannot say whether this is the third, fourth, or fifth time, that I have been examined in this controversy; I have been examined three times here, whether or not in Alexandria, cannot say. About the time of the negotiation with Moore, I had one with Mr. Cazenove on the same subject; it was a transaction of the same kind; transacted in the same way. The deed is similar; cannot recollect whether I made the application personally to Mr. Cazenove; cannot say whether I made the bargain with him; cannot say whether I had any conversation with him on the subject. My impression is that I had. I procured the money from him; cannot say what representations I made in that negotiation of my wants or to whom. My impression is I made it with him; I procured $2,500 from Mr. Cazenove; I have not interposed to prevent that being paid; that was also a ten per cent. rent. About January, 1824, I gave Mr. Lloyd a written order not to pay this annuity to Moore. (Copied in pages 68 and 9.)

About the same time, I got the money from Moore and Cazenove, I procured $2,500 from Wm. or John Patten on the same terms on other houses in the same row; I think that has been redeemed; think I paid it myself; cannot say how that was transacted.

I presume R. J. Taylor wrote all the papers between me and all the parties; cannot say in particular who gave the instructions for drawing them; but suppose they were given by both parties. In all the cases I presume all the parties were present at the giving the instructions.

(*Questions to, and answers of, Jonathan Scholfield.*)

J. Scholfield's examination.

1. Ques. When you first went to Moore, for the purpose of getting the $5,000, did you not expect that the annuity or rent charge would be $500 a year, and that you should have the privilege of putting an end to the rent, any time after the expiration of of a year, by repaying the $5,000?

Ans. That is the way I hoped to have raised the money; but cannot say I positively expected to do so.

2. Ques. Does the deed from yourself and wife to Moore, as drawn and executed, express truly the terms on which you expected, and proposed, or hoped, to raise the money from Moore, except the putting in the term of five years, for your keeping the money, instead of the one year originally proposed by you?

Ans. I cannot answer that question, as the deed seems to imply a sale; and it was not my intention to make an ultimate sale, but to repay the money with 10 per cent. interest; which payment was to put an end to the annuity. And I believe Moore expected I should return the money at the end of five years.

3. Ques. Did not the discussion you have spoken of, between Moore and yourself, turn substantially upon this, whether you should have the privilege of returning the money and putting an end to the annuity, after the expiration of one year as you proposed, or of ten years as he proposed?

Ans. We had very considerable discussion on the subject, and that was one important point; there might have been other points of discussion which I do not recollect; but that was one.

4. Ques. Did you not understand, from the whole tenor of the conversation and discussion between you and Moore, that his object was to have the annuity or rent charge, run for as long a time as he could get, without the privilege of extinguishing it by a return of the $5,000; and that he would have preferred a perpetual, to a redeemable or extinguishable, annuity or rent charge?

Ans. I have no doubt he would have wished to fix on as long a term as he could get; but have no recollection that he proposed any longer one than ten years; and that he would have preferred a perpetual and irredeemable rent, but he knew that could not be got.

5. Ques. Does the first deed truly express the terms on which Moore first proposed to advance the money, except the term of five instead of the ten years originally insisted on by him?

Ans. To this I answer as before, the deed seems to imply a sale, and both parties must have understood, that it was only to secure money advanced.

6. Ques. Point out what part of the deed seems to you to imply a sale, or ultimate sale, as you have called it?

Ans. I cannot say without particularly examining the deed; but it appeared to me so when I heard it read.

7. Ques. What reading do you allude to? Was it when you heard it read in court on this trial?

Ans. That was the time I alluded to, for till I heard it there read, I did not recollect the language of the deed particularly.

8. Ques. Did you not understand from the terms of your original proposition to Moore, that you were to grant an annuity or rent charge, issuing out of the property on which it was secured, and that the payment of the rent was to be secured by clauses of distress and entry as reserved in the deed?

Ans. I did understand that the rent was to be punctually paid, and secured as a rent charge by distress or entry; and that the rent was to be $500 a year for $5,000 to be advanced.

9. Ques. Did Moore exact of you or did you give him any sort of promise, stipulation, or security whatever, verbal or written, for the repayment of the $5,000, other than what is contained in the deed itself?

Answer. No, none other.

10. Ques. Out of what resources, and in what way did you expect to raise the $5,000 to pay Moore, at the end of the first year.

Ans. That is a difficult matter for me to say. I then owned a good deal of bank stock, real estate, and goods in two stores, a flour store and dry goods store.

11. Ques. Was the bank stock paid for or under pledge? Were you not then embarrassed by purchases of real estate not paid for; and had not John Lloyd (the present plaintiff) to make the payments for you?

Ans. Some of the bank stock was pledged on stock notes, some clear; I let the Exporting and Importing Company of Georgetown have sixteen or seventeen thousand dollars worth of Union Bank stock, besides what was pledged on stock notes; whether this was before or after the transaction with Moore, I do not know. The auction duty to the U. States on the sale amounted to $300. I was embarrassed with purchases of real estate which John Lloyd had to pay for.

12. Ques. When you first made your application to Moore, were you not aware that the usual market price of ground rents in Alexandria, was then, and for many years had been, ten years' purchase; and that when rent charges, or what you call annuities, were raised and granted for sale, or for the purpose of raising money on them, they were usually at the same rate; that is to say, ten times the amount of the annual ground rent, paid on purchases of such, or ten times the amount of the annual rent charge advanced at its creation?

Ans. Yes. I believe that was the general custom. It might have varied a little to twelve years' purchase.

13. Ques. When you said that your first proposition to Moore, was to raise or borrow $5,000, do you mean that you are uncertain which expression you used, raise or borrow?

Ans. I cannot say which expression I used, or whether one or both.

14. Ques. When were you first induced to suspect or take up the impression, that this deed of yours, and others of the like description, were usurious? Was it not about the time you gave the notice of the 9th June, 1824, to Mr. Lloyd, the present plaintiff, requiring him to withhold all future payments of the rent? (Here referring to No. 2, in the defendant's first bill of exceptions, copied in pages 68 and 9.)

Ans. It was some time before that notice; but whether one year or two years before, I cannot recollect.

15. Ques. Were the yearly rents, under your deed to Moore, paid by you as long as you held the property, and afterwards by Mr. Lloyd, till you gave the said notice to withhold payments?

Ans. The rents were paid by me as long as I held the property, and when I sold to J. Lloyd, I believe he continued to pay them till he received that notice. I do not know that he has paid any since.

16. Ques. Were you not fully aware, at the time of the transaction with Moore, that a loan of money at a rate of interest exceeding 6 per cent. per annum, was usurious and unlawful.

Ans. I think I must have known that.

17. Ques. Were you not, at that time, well acquainted with the customary terms in deeds for rent charges and ground rents in Alexandria?

Ans. I am not well acquainted with deeds; but I knew the customary price of such rents, which was usually ten for one; and I had understood that such rents were usually secured by clauses of distress and entry in case of their being in arrear.

The witness being further examined by plaintiff, testified that it was generally understood in Alexandria that Moore was a money lender, or rather that he was a moneyed man, and would advance money on security he approved of.

MEMORANDUM.—The parties respectively give in evidence the several matters, deeds, and papers contained in and annexed to defendants 1st bill of exception; all which are mutually admitted as part of this statement.

Jacob Morgan's testimony.

Jacob Morgan, another witness sworn and examined on the part of the plaintiff, testified:

I resided in Alexandria in 1814. Have no knowledge of any particular transaction of W. S. Moore, but the general impression was that he was a moneyed man and a money lender.

From the reputation of Mr. Moore as a money lender, my impression was, without any knowledge of his transactions, that he, as well as many other moneyed men in Alexandria, was in the habit of lending money secured on ground rents, and that the ground rent yielded more than six per cent. a year.

Andrew Scholfield's testimony.

Andrew Scholfield, a witness sworn and examined on the part of the plaintiff, testified as follows:

I had a lien on the four houses described in the deed from Jonathan Sholfield and wife, to Moore, to the amount from 10 to 12 thousand dollars; and agreed, at the instance of Jonathan Scholfield, to postpone that lien to Moore's, considering the property sufficient for both. I did not know at the time from whom Jonathan Scholfield was to get the money: only understood from him that he wanted to raise $5,000. I think the common report in Alexandria, at that time, was that Moore was a money lender; but cannot say that such report prevailed in 1814.

Ques. Do you consider an advance of money for an annuity or rent charge at ten years' purchase, such annuity or rent charge being raised or created for the purpose of obtaining such advance, to be a lending of money?

Ans. Yes. The general price of ground rents, at that time in Alexandria, was ten years' purchase; and when ground rents or rent charges were raised or created for an advance of money, they were generally put at the same rate.

John Gird's testimony.

John Gird, another witness sworn and examined on the part of the plaintiff, testified as follows:

I was an inhabitant of Alexandria 20 years. Knew W. S. Moore from the time he set up his sugar-house till he left Alexandria: he was, to my own knowledge, a money lender, and generally so considered in Alexandria.

Wm. Veitch's testimony.

William Veitch, another witness sworn and examined on the part of the plaintiff, testified as follows:

William S. Moore was considered a moneyed man; and I have had various talks with him about his affairs, in which he said he had let out a great deal of money in ground rents: he was generally understood to be a man who had money that could be got.

I heard him say that he had let many persons have money, and taken security on ground rents. I dont recollect he ever mentioned having *lent* money.

Among the persons mentioned by Moore, as those to whom he had advanced money on ground rents, my impression is, he mentioned Scholfield; and, also, Baden and Hammon, and others not particularly recollected. Baden is dead: he died worth some money; but had, at one time, been insolvent: many persons lost money by him. Hammon was also said to have been insolvent.

Jonathan Scholfield further examined.

Jonathan Scholfield being again called by one of the jury, and asked upon what authority he gave the notice to Lloyd to withhold the payment of the rents? said that some time about the year 1814, his affairs had become embarrassed; and when he gave that notice, he considered that, as Moore had received about 10 years rent, which would amount to the sum originally advanced, he had got his proportion, and that the rest ought to go among his other creditors; that he considered the transaction was usurious, and that Moore had got as much as he deserved.

Being asked how he made out that Moore had received 10 years' rents, making up the sum of $5000, as he had himself shown that no rent was paid after December, 1823:

He answered he had not meant to speak certainly about the precise amount of rents received by Moore, but thought it was some where in the neighborhood of $5,000.

Alexander Moore again examined.

Alexander Moore again examined. The ground rents, similar to that read in the case, have been very common in Alexandria. I have drawn many of them myself. This species of investment was frequently in the market for sale after the rents were created. They were sometimes sold at ten years' purchase, sometimes a greater number if well secured. For many years their ordinary market price did not exceed ten years' purchase.

It was in June, 1815, that Scholfield's embarrassment first commenced, within my knowledge, as notary public.

Men are apt to be embarrassed sometime prior to their being protested.

This sort of deeds has, I think, begun in Alexandria since 1800. Knew of none before that time; knew of none recently, since the institution of this suit, or perhaps a short time before.

Moore continued to carry on his business until after this transaction, except as it might have been interrupted by the war.

Robert J. Taylor's testimony.

Robert J. Taylor, esq., a witness sworn and examined on the part of the defendant, testified as follows:

I commenced practice as a lawyer in 1799, but got into no considerable business until about 1805. I found annuities, ground rents, &c.,

in common practice. Mr. Keith was the principal conveyancer when I came to the bar; he became old and infirm, and his business gradually left him. This mode of investment, in Alexandria, grew out of particular circumstances. Part of the town of Alexandria was originally sold out absolutely in fee. Other large proprietors refused to sell, except on a reservation of rents. This was originally done by two deeds. In 1779 a large sale was made under the will of Mr. Alexander. In 1784 another large sale. Mr. Thornton Alexander had a number, and brought them into market. Mr. C. Alexander sold much land in the same way. Subsequently these proprietors of land, subject to rent, would dispose of them. They became in demand, and afterwards new conveyances creating rents were adopted. Sometimes there was no clause of purchase: sometimes there was no compulsory clause of purchase or redemption. When I came into practice the species of annuity originally created by the proprietor was common. The mode of doing it was by two deeds; one of absolute conveyance, the other a reconveyance reserving a rent, many of them originally irredeemable; others the grantor had the right. The usual price was ten years' purchase.

I have always thought that the mode of effecting the object by one deed originated with me, having found that one would answer and be more simple. I believe it was after 1805, that this change occurred; since that period it has been generally adopted, particularly by the lawyers younger than myself.

The first application was made by Scholfield to me for $10,000. I drew the original deed in June; before court it was missing; and I drew another, principally from Mr. Scholfield's direction, in October, '14; the present is the original. There were three encumbrances: one to A. Scholfield: 2. An annuity for life to Mrs. Piercy of $200; 3. An annuity of $50 in fee. Mrs. Piercy's was to be charged, as was that to Alexander, of $50. Three annuities, deeds, were drawn. I was the counsel of Mr. Moore, and generally of Mr. Scholfield and of Mr. Lloyd. In 1816, when Scholfield conveyed to Lloyd, the whole subject was again examined by me. In 1821, the policy of insurance was to be conveyed to me; a policy was made for seven years, and renewed for a time, not since. In June, 1814, Mr. Scholfield called on me, and told me he wanted to raise money, and mentioned the sum of $10,000; that he was considerably in debt for expenses incurred in building the houses. He requested me to apply to Moore and Cazenove. Mr. S. told me he wished to raise it by way of annuity, with a clause of redemption at pleasure. Mr. Cazenove ageeed to the proposals as communicated by me, and the deed was prepared by me according to Scholfield's original proposition. He negotiated with Patten, and my instructions, in drawing that deed, were from Scholfield alone. Mr. Moore objected to the terms of the proposition, and a meeting between him and Scholfield was appointed to be held at my office. It was held. There appeared to me to be no other subject of difference, except that Scholfield wished to be able to redeem at pleasure. Moore wished it to be perpetual. It was finally arranged; ten years was talked—five was finally agreed.

I did not understand from either party that there had been any previous communication between them. There were considerable preliminary difficulties. Scholfield was much involved. The land was not a good security, independent of the houses. The application I understand to be originally to me to devise some mode in which the property might be a good security. The clause of insurance was suggested by me as the only means by which this could be done. I should think that without the buildings, the property

would not be with more than $2,000 or $2,500. I have always believed that the communication between the parties was entirely either through me, or in my presence. In none of these conversations there was no employment of the word loan, or any other of equivalent import, and the deed embraces the whole contract as finally settled. The terms of the other deeds correspond to Scholfield's dictation, except as to the formal or technical part. There have been very few instances of redemption. In Alexandria, none, I think, of Mr. Moore's. The ordinary market price is ten years' purchase. Mr. Moore's were estimated in a deed of trust at that price. At the sale some sold as high—others lower. One of them has been entirely lost; many instances in Alexandria of their being deteriorated, and become nearly or entirely worthless; never heard the term lender applied to Mr. Moore until after this controversy; the reason obvious of its subsequent application. Mr. Patten's annuity has been redeemed by Lloyd, as he informed me.

Mr. Scholfield's circumstances, so far as they were visible, did not justifiy the belief that he would redeem.

From my knowledge of the property in question, the land incompetent; no policy of insurance since 1821 or '2. I think, as the property now stands, it is a bad investment. Mr. Moore left Alexandria and moved to Baltimore, I think, in the summer of 1815, having sold out in Alexandria in the spring of that year. He was a very large proprietor of real estate.

He purchased from P. Janney, on King street and Alfred street; subsequently purchased where he erected his dwelling-house and refinery, on Cameron, two entire sides of a square, great portion of a third, and part of fourth; purchased of Gadsby a large vacant lot, a small one, a lot near town; from Miss Adams Towers lot; from Pendleton a large number of town lots; from a brother-in-law of mine 500 acres; from H. or T. 150 acres near Thornton's hill, in conjunction with well, the city tavern, in January, 1815; this perhaps before his removal; many other lots, &c.

Have not examined the records to see the particular instances of the two deeds as creating rents. My idea has always been that without some obligation to repay, there could be no loan. It was optional with the grantor, and seldom exercised.

Mr. A. C. Cazenove, a witness sworn and examined on the part of the defendant, testified as follows:

A. C. Cazenove's testimony.

Mr. Taylor applied to me. I never spoke to Mr. Scholfield, or he to me, on the subject. If Mr. Scholfield had made the proposal himself, I should not entertained it, because his manner of dealing was such that I had no confidence in him, particularly for a large sum. Mr. Taylor assured me he considered the security ample, and I took it on his assurance.

Mr. Swann's testimony.

Mr. Swann, being sworn, examined on the part of the plaintiff, testified as follows:

Begun to read law in 1784, with Col. Simmes; drew deeds from John Alexander's executors, in 1784–5; they were leases by the landlords reserving perpetual rents, without, as far as I recollect, any clause of redemption; subsequently, in some instances, such a clause was introduced.

I purchased a lot with a rent of £8, which subsequently, with such a clause, I redeemed at £80. Began my profession in 1790; moved to Alexandria in 1796, and continued there until I moved to Washington. Many instances in which the bargainee was authorized to extinguish the rent. I have no

knowledge of this species of deed. Mr. Taylor and myself differed in our professional opinions upon the validity of them. Upon these facts, I believe, I drafted the notice from Scholfield to Lloyd in this case, being of the opinion the deed was void on the face. My impression was that on the face of the instrument it appeared to be a cover for a loan. Mr. Taylor and myself never differed when there was proof of the transaction being a loan.

Anthony C. Cazenove's testimony.

Anthony C. Cazenove, a witness produced on the part of the defendant, testified as follows:

Mr. Taylor applied to me, on behalf of Scholfield, to advance $2,500 on the purchase of an annuity. I never spoke to Scholfield on the subject, nor he to me. If Scholfield had himself have made the proposition, I should not have entertained it: and being cross-examined, he said, my reason for saying I should not have entertained it, had Scholfield proposed it, is, that I had no confidence in him, particularly for a large sum. Mr. Taylor assured me he considered the security sufficient, and I took the annuity on such, his assurance. Mentions the names of several persons, grantors of this kind of annuities in Alexandria, who have since become insolvent.

(Again examined in chief.) Never heard such insolvency attributed by any human being to the circumstance of their being engaged in such contracts.

MEMORANDUM.—The deeds from said Scholfield and wife to A. C. Cazenove, and to William Paton, mentioned in the foregoing evidence of R. J. Taylor, &c., were produced and given in evidence as follows: (Copied in pages 93, 97, &c.)

Walter Smith's testimony.

Walter Smith, a witness sworn and examined on the part of defendant and avowant, testified:

The transaction between Jonathan Scholfield and the Exporting and Importing Company of Georgetown, was this:

At a public sale of the company's goods in December, 1815, he bought to the amount of $5,260 19; for which he gave his notes at 6, 9, and 12 months. Before the notes fell due, apprehensions were entertained of his solvency, and in April, 1816, an arrangement was made with him for securing the company on 3,100 —— shares stock of the Union Bank of Alexandria, standing in his name, but pledged by him to the bank for $14,150.

The company took up this debt for Scholfield at the bank; which, with his previous notes, made him debtor to the bank $19,410; for which the company took the stock on collateral security, and in July, 1817, had it sold at auction; at which sale, it brought $18,522 50, subject to a deduction of $393 45 for auction duties and charges. The proceed was passed to his credit in account with the company, with certain dividends declared, in the mean time, on the money part of the stock; and upon a settlement of the whole account between him and the company, there was a balance against him, $80 71; which was passed to the account of profit and loss, in the books of the company, and so stands to this day. These 3,100 shares of stock consisted, in part, of a subscription in money $15,500; and the residue, of a subscription in certain road stock, $6,200, according to some provision in the bank charter.

Thomas Preston's testimony.

Thomas Preston, a witness sworn and examined on the part of the plaintiff, testified as follows:

I knew William S. Moore. He was generally known as a purchaser of annuities, and reputed a lender of money. I never knew of his

lending money. In the general phrase, raising money on ground rents, was called borrowing money: for instance, if one man went to another, and proposed to raise a sum of money, on a ground rent, at ten years' purchase, it was generally considered borrowing money. It was generally understood Mr. Moore vested money in ground rents; and I never knew of his lending money except it was in purchasing ground rents at 10 years' purchase. I did, myself, once call on him to get $1,000, and told him I would give him a ground rent, at ten years' purchase, which would yield him 10 per cent. a year on his money. Whether he agreed to advance the money, or agreed conditionally, upon Mr. Taylor's being satisfied with the title and sufficiency of the property, I do not recollect; but the substance of the bargain was, that I was to get $1,000, and was to give him a ground rent of $100 a year. I don't recollect whether, when I applied to him for the money, I stated to him I wanted to borrow the $1,000, or simply that I wanted the money. The bargain fell through, in consequence of Mr. Taylor's opinion that the property was not sufficient security.

Thomas Swann's testimony.

Thomas Swann, esq., sworn and examined as a witness on behalf of the plaintiff, testified:

That he commenced as early as 1784, whilst a student of a law, in the office of the late Col. Simms, drawing deeds, conveying lots, in Alexandria, on ground rents reserved for ever. The practice, he found, had commenced as early as the year 1779. A great number of such deeds were given by the executors of John Alexander, a very extensive proprietor of ground in Alexandria. He recollects none of the deeds, drawn by him whilst a student, that contained any clause for the future extinguishment of the ground rent by payment of a sum in gross; but, after some years, it became usual to insert a clause enabling the grantee to purchase out the absolute fee, and extinguish the ground rent by paying a sum in gross, equal to 10 years' purchase of the ground rent. Some time about the year 179 , he himself purchased a lot on those terms: reserving a ground rent of £8 a year, for ever, with a condition enabling him to purchase out the absolute fee, and extinguish the ground rent, at any time, by payment of £80 in gross. It was not for many years after that, he heard of the practice of giving deeds, granting ground rents, or rent charges, in consideration of money advanced, and making the rent redeemable at 10 years' purchase. He never drew such a deed: was of opinion that such transactions were usurious; and that in such a deed as the one now in question, the transaction appeared on the face of the deed, to be a cover for a loan and usurious. On that point Mr. Taylor and himself had always differed in opinion. Mr. Taylor being of opinion that such deeds were lawful and clear of usury, unless there was a loan of money at usurious interest, otherwise proved in the case.

Defendant's 2d exception.

*(Defendant's 2d Exception.)*

Whereupon the counsel for the defendant and avowant prayed the court to instruct the jury as follows:

That the contract between said Jonathan Scholfield and William S. Moore, such as it is evidenced by the deed from said Scholfield and wife to said Moore, set out in the proceedings and given in evidence by the plaintiff as aforesaid, was lawful and free of the taint of usury; and in order to impeach it of usury, and support the issues of fact joined in this cause on the

part of the plaintiff, it is necessary for the plaintiff to prove, that, besides the contract imported by the terms of said deed, there was an actual contract between said Scholfield and Moore for the loan of five thousand dollars, at usurious interest, to wit, at the rate of ten per cent. per annum, to be disguised under the form and name of an annuity or rent charge; and that such sum was actually lent by said Moore to said Scholfield, and said deed given in pursuance and execution of such contract and loan, securing the said usurious interest under the form and name of such annuity or rent charge; that the facts given in evidence to the jury as aforesaid to support the issues above joined on the part of the plaintiff, did not import such a lending of money by Moore to Scholfield, at usurious interest, as was sufficient to support the issues joined on the part of the plaintiff in replevin, upon the second and fourth pleas, by the plaintiff in replevin pleaded to the cognizance in this case.

Which instruction the court refused; to which refusal the defendant and avowant, by his counsel, excepts, &c.; and this his bill of exceptions is sealed, &c., this 4 January, 1833.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

*(As in Defendant's first prayer in his first Exception.)*

Defendant's 3d exception.

And the plaintiff prayed the court further to instruct the jury, that the matters shown in evidence to the jury as aforesaid, are proper for the consideration of the jury to determine from the whole evidence under the instruction of the court as already given to them in this cause, whether the said contract, so made between the said Moore and Scholfield, was in substance and effect a loan at usurious interest, or a bona fide contract for the bargain and sale of a rent charge; and if the jury from the said whole evidence, under the instructions as aforesaid, shall believe it to have been such a loan, they should find for the plaintiff, if otherwise for the defendant.

Which instruction the court gave as prayed; to which the defendant, by his counsel, excepted; and this his bill of exceptions is signed, sealed, and ordered to be enrolled, this 5th of January, 1833.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

*(Defendant's 4th Exception.)*

Defendant's 4th bill of exception.

The counsel for the defendant then prayed the court to instruct the jury, that if they shall believe from the evidence aforesaid, that the land lot of which the said rent charge mentioned in said deed from Scholfield to Moore was to issue, was in itself and independently of the buildings upon the same, are wholly inadequate and insufficient security for said rent, that then the jury cannot legally infer from the clause in said deed, containing a covenant on the part of said Scholfield to keep the said houses insured, any thing affecting said contract with usury or illegality; which instruction the court refused: whereupon defendant prayed the court to instruct the jury as follows, to wit, that if the jury shall believe, from the evidence, that the fair and customary price of annuities and rent charges, at the date of the said deed from Scholfield, was in the market of Alexandria ten years' purchase, and so continued

for a period of years, then from the circumstances of the rent being ten per centum on the amount advanced, the jury cannot legally infer from such circumstance any thing usurious or illegal in the contract.

But the court refused to grant the said instructions, or either of them, as prayed by the counsel for defendant; whereupon the said counsel excepted to the said opinion of the court, and its refusal to give either of the said instructions as prayed; and the court did thereupon sign and seal this bill of exceptions, this 5th January, 1833.

W. CRANCH. [SEAL.]
JAMES S. MORSELL. [SEAL.]

(No. 1.)

Deed referred to in defendant's 1st bill of exceptions.

*(Indenture from Scholfield and wife to Plaintiff, referred to in Defendant's first bill of Exceptions,* page 31.)

This indenture, made this twenty-ninth day of October, in the year one thousand eight hundred and sixteen, between Jonathan Scholfield and Eleanor, his wife, of the town of Alexandria, in the District of Columbia, of the first part, John Lloyd, of the same town, of the second part, and Andrew Scholfield, also of the said town, of the third part. Whereas Mary Piercy, late of the town aforesaid, by indenture of the 14th day of August, in the year 1811, demised to the said Jonathan Scholfield a lot or half acre of ground, in the said town, on the north side of Duke street, and on the east side of Washington street: beginning at the intersection of the said streets; thence, northwardly on Washington street, to a point equidistant from Duke and Prince streets; thence, eastwardly parallel to those streets, to a point equidistant from Washington and St. Asaph streets; thence, southwardly parallel to those streets, to Duke street; then, on Duke street, westwardly to the beginning; which lot was subject to a rent of fifty dollars per annum, payable to James H. Hove, as assignee of Wm. T. Alexander, his heirs and assigns, for ever, on the first day of October in each year. To hold the said lot to the said Jonathan Scholfield, his heirs and assigns, for ever, subject to the said rent, and subject also to a further rent of two hundred dollars, payable to the said Mary Piercy during her life, by half yearly payments on the first day of May, and on the first day of November, in each year. And the said Jonathan Scholfield has erected on the said lot five three story brick buildings, extending from the north side of Duke street, along Washington street, to the south side of a three feet alley, distant from Duke street one hundred and eight feet four inches; and extending eastwardly on said alley, and on Duke street, one hundred and twelve feet five inches, be the same more or less, to an alley leading along the east line of the lot eleven feet wide; and three two story brick buildings, extending from the north line of the said three feet alley, along Washington street, to the north line of the said half acre; thence, east, along the said north line, and the said three feet alley, to the said alley of eleven feet. And whereas the said Jonathan Scholfield, by deed of the eleventh day of June, 1814, granted to William S. Moore an annuity or rent of five hundred dollars, payable by half yearly instalments, on the tenth days of June and December, in each year, for ever, charged upon the four southern three story tenements, redeemable after the expiration of five years, by the payment of five thousand dollars; and by another deed of the

twenty-fourth day of the same month, granted to Wm. Paton one other annuity or yearly rent of two hundred and fifty dollars, payable in equal half yearly instalments, on the 24th days of June and December, in each year, for ever, chargeable on the *on the* north three story tenement, and on the south two story tenement, extinguishable at any time by the payment of $2,500; and by another deed of the 13th day of the same month, granted to Anthony Charles Cazenove, another annuity or yearly rent of two hundred and fifty dollars, payable in equal half yearly payments on the thirteenth days of June and December, in each year, for ever, chargeable upon the two northern two story tenements, and redeemable at an time by the payment of $2,500; and by deed of the 10th day of the same month, granted to Robert J. Taylor, another annuity or rent of $200, chargeable on the four southern three story tenements, and to be received and applied to the payment of the said annuity to the said Mary Piercy, so as to keep the other tenements free and exonerated from the same; and also an annuity of $50 to be received as often as necessary, and applied to the payment of the premiums of insurance against fire on certain of the said buildings therein mentioned.

And by another deed of the 26th day of the same month, conveyed the whole of the said half acre with the buildings and improvements, subject to the encumbrances aforesaid, to the said Robert J. Taylor, his heirs and assigns, for ever, in trust to secure the said Andrew Scholfield against certain endorsements therein mentioned. And whereas the said Jonathan Scholfield has lately sold the five brick tenements and the lots whereon they stand, bounded on the south by Duke street, on the west by Washington street, on the north by the said three feet alley, and on the east by the said eleven feet alley, to the said John Lloyd on the following terms, that is to say: that the said five tenements shall remain subject to the said annuities to William S. Moore, according to the deed of grant thereof, and to the said annuity of fifty dollars to James H. Hove, and to one-half on one hundred and twenty-five dollars of the annuity of Wm. Paton; and that they shall remain bound under the said deed of trust to Robert J. Taylor, for the use of Andrew Scholfield, to the extent of eleven thousand dollars, and no more; and that they shall be exonerated from all other charges and encumbrances. Now, therefore, this indenture witnesses that the said Jonathan Scholfield and Eleanor, his wife, in consideration of the sum of twenty-three thousand two hundred and fifty dollars, to the said Jonathan, by the said John Lloyd, in hand paid, of which the receipt is hereby acknowledged, have granted, bargained, and sold, aliened and confirmed, and do, by these presents, grant, bargain, and sell, alien and confirm unto the said John Lloyd, the five three story brick tenements and lots of ground as contained within the boundaries before expressed, together with the full and free use of the said alleys, and of the pump in the smaller alley, in common with others entitled thereto, and all other privileges and appertenances to the same belonging. To hold the said five tenements and lots of ground, *subject to the charges and encumbrances last above-mentioned,* and with the privileges and advantages aforesaid, to the said John Lloyd, his heirs and assigns, to his and their only use for ever. He the said John Lloyd, his heirs and assigns, yielding and paying for the same to the said Jonathan Scholfield, his heirs and assigns, the annual rent of fifty-dollars, on the first day of October, in every year for ever; and the annual rent of $125 dollars, by equal half yearly payments, on the 24th days of June and December, in every year, for ever; which said

rents may, however, be discharged by the said John Lloyd, his heirs or assigns, paying to James H. Hove, his heirs or assigns, the said rent of fifty dollars before mentioned; and to William Paton, his heirs or assigns, one moiety of the said rent of $250 above-mentioned; and if the said rent should, at time hereafter, be received by the said Jonathan Scholfield, his heirs or assigns, from the said John Lloyd, his heirs or assigns, they shall be exclusively applied to the purpose aforesaid, the said Jonathan Scholfield hereby covenanting for himself and his heirs to hold and receive the rents hereby reserved in trust, for the purpose before expressed, and for no other purpose; and that, on the extinguishment of the said rents payable to James H. Hove and Wm. Paton, the rents hereby reserved shall also respectively cease and determine. And the said John Lloyd, for himself, his heirs, and assigns, does hereby covenant with the said Jonathan Scholfield, his heirs and assigns, that he the said John Lloyd, his heirs and assigns, will well and truly pay the rents, hereby reserved, as they become due to the said Jonathan Scholfield, his heirs or assigns, or to the said James H. Hove and Wm. Paton, respectively, and their respective heirs and assigns, as before expressed; and that if default shall be made in such payment, it shall be lawful for the said Jonathan Scholfield, his heirs and assigns, to enter on the premises demised, and to levy by distress and sale of the goods and chattels there found, the rent in arrear, and the costs of distress and sale; and that if the said rent reserved be in arrear, and unpaid for the space of thirty days after any day of payment, and no subject of distress sufficient to satisfy the same can be found on the premises charged, then it shall be lawful for the said Jonathan Scholfield, his heirs and assigns, to re-enter on the said premises, and to hold the same as of his former estate; and for the purpose of indemnifying the said John Lloyd, his heirs and assigns, against the payment of more than one moiety of the said rent reserved to Wm. Paton, and against the payment of any part of the said rent reserved to the said Mary Piercy, the said Jonathan Scholfield does hereby grant, bargain, and sell, unto the said John Lloyd, one certain annuity or rent of one hundred and twenty-five dollars, to be issuing out of the most southern of the said two story brick tenements and lots situated immediately on the north side of the said three feet alley, payable by equal semi-annual instalments on the 24th days of June and December, in every year, for ever hereafter; and one other annuity or yearly rent of two hundred dollars, to be issuing out of and charged upon the second or middle tenement and lot of the said three story brick tenements, payable in equal semi-annual instalments on the first day of May, and on the first day of November, in each year, to the said John Lloyd, his heirs and assigns, during the life of the said Mary Piercy: provided that it shall be lawful for the said Jonathan Scholfield, his heirs and assigns, to pay the said rent of $125 hereby granted to the said William Patton, his heirs and assigns, towards the discharge of his rent, and to pay the said rent of two hundred dollars hereby granted to the said Mary Piercy in discharge of her rent; and that if the said rents, hereby granted, should be received by the said John Lloyd, his heirs and assigns, they should be respectively applied to the payment of the said William Paton's and Mary Piercy's rents, and to no other purpose whatever; the said John Lloyd, for himself, and his heirs and assigns, hereby covenanting to stand seized of the said rents for the purpose before expressed, and for none other; and that, on the extinguishment of the said rent granted to William Patton, and of the said rent reserved to Mary Piercy, the rents hereby granted to the said John Lloyd, shall respectively cease and determine; and the said Jonathan Scholfield, for

himself, his heirs and assigns, does hereby covenant with the said John Lloyd, his heirs and assigns, that he the said Jonathan Scholfield, his heirs and assigns, will well and truly pay the rents hereby granted as they fall due, either to the said John Lloyd, his heirs or assigns, or to the said William Paton, his heirs and assigns, and the said Mary Piercy and her assigns; and that on default in such payment it shall be lawful for the said John Lloyd, his heirs and assigns, to enter on the premises charged with the payment of the rent which shall be so due and unpaid, and to levy by distress and sale of the goods and chattels there found, the rent in arrear, and the costs of distress and sale; and that if the said rents, or either of them, shall remain unpaid for the space of thirty days after it shall have become due, and no subject of distress sufficient to satisfy the same can be found on the premises charged, then it shall be lawful for the said John Lloyd, his heirs and assigns, to enter on the tenement and lot charged with the rent so in arrear, and from thence to expel and remove the said Jonathan Scholfield, his heirs and assigns, and to hold and enjoy the same as the absolute estate of him the said John Lloyd, his heirs and assigns.

And the said Jonathan Scholfield, for himself and his heirs, does hereby covenant and agree with the said John Lloyd, his heirs and assigns, that the said Jonathan Scholfield is now in his own right, seized in possession of a good, sure, absolute, and indefeisible estate of inheritance in fee simple, in the premises herein before conveyed and charged with the said rents, subject to the charges and encumbrances before enumerated, and to none other; and that he and his heirs will at all times hereafter, at the request and at the costs of the said Jno. Lloyd, his heirs and assigns, execute and deliver all further reasonable assurances and conveyances which may be necessary, more fully to convey and transfer the said five three story brick tenements and lots, and the said annuities to the said John Lloyd, his heirs and assigns, according to the true intent and meaning thereof; and, lastly, that he the said Jonathan Scholfield, and his heirs, the said five tenements and lots, and the said annuities herein before conveyed and granted, will for ever warrant and defend to the said John Loyd, his heirs and assigns, against the claims and demands of all persons whatever, other than *than* those claiming under the grants and conveyances before enumerated. And the said Andrew Scholfield, for himself, his heirs, executors, and administrators, does hereby covenant with the said John Lloyd, his heirs and assigns; that he the said Andrew Scholfield, his executors, administrators, and assigns, will not hold the said five three story brick tenements and lots chargeable under the said deed of trust to Robert J. Taylor, with any further or greater sum than eleven thousand dollars; and that for any further sum to which he may be entitled under the said deed, he will have recourse to the said three story tenements and lots.

In witness whereof, the parties to this indenture have hereto set their hands and seals the day and year first before written.

JONATHAN SCHOLFIELD. [SEAL.]
ELEANOR SCHOLFIELD. [SEAL.]
JOHN LLOYD. [SEAL.]
ANDREW SCHOLFIELD. [SEAL.]

Sealed and delivered in presence of
R. J. TALOR,
LEONARD COOKE,
ADDISON H. CLARKE,
WILLIAM COMES.

At an United States' Circuit Court of the District of Columbia, continued and held for the county of Alexandria, the 26th day of December, 1816. This deed from Jonathan Scholfield and Eleanor, his wife, to John Lloyd, was proved by the oaths R. J. Taylor and Wm. Comes, and the affirmation of Addison H. Clarke, to be the act and deed of. (Balance of the deed not on file.)

(No. 2.)

Notice from J. Scholfield to plaintiff. Referred to in defendant's 1st exceptions.

*(Notice from Scholfield to Plaintiff. Referred to in Defendant's 1st Exception,* page 32.)

ALEXANDRIA, *June 9th,* 1824.

SIR: As you hold under me the property upon which I granted a rent charge of $500 a year to William S. Moore, I now give you notice the contract by which that rent charge was created, I consider to be usurious, and that I shall take measures to set aside the same, and I hereby require you to withhold from William S. Moore the payment of any further money on account of this rent charge; and in case distress should be made upon you for the rent, I promise to save you harmless if you will resist the payment by writ of replevy. I wish you to understand that if you make any further payment, after receiving this notice, that you make them at your own risk.

I am, with great respect, yours,

JON. SCHOLFIELD.

To Mr. JOHN LLOYD.

DISTRICT OF COLUMBIA,
*County of Alexandria,* } *sct.*

Charles Scott personally appeared before me, a justice of the peace for the county aforesaid, and made oath in due form of law that he delivered a true copy of the within notice to John Lloyd, on the 9th day of June, 1824 in person.

Given under my hand this 9th day June, 1824.

CHR. NEALE.

(No. 3.)

Assignment fromScholfield to T. K. Beale. Referred to in exceptions in page 32.

*(An assignment from said Scholfield to T. K. Beale. Referred to in Defendant's 1st Exception,* page 32.)

Whereas I, Jonathan Scholfield, sold a certain real property, in the town of Alexandria, to John Lloyd, by which contract and sale said Lloyd was bound to pay half annually to William S. Moore the sum of two hundred and fifty dollars, making the sum of five hundred dollars per annum; and whereas I have legally noticed the said John Lloyd to cease paying the said annuity, claiming the principal sum of five thousand dollars for the benefit of my creditors, when the suit now pending is ended, and which will more fully appear by reference to the suit in the circuit court of the United States for the county of Alexandria, District of Columbia, between John Lloyd and said William S. Moore. And should the said Lloyd be released from paying the annuity of five hundred dollars

as aforesaid, I do hereby assign, for value received, one full fifth part thereof to Thomas K. Beale; as witness my hand and seal this 18th day of November, 1826.

JONA. SCHOLFIELD. [SEAL.]

Test:
SAMUEL W. SCHOLFIELD,
WILLIAM J. BALL.

(No. 4.)

Copy of the said assignment and notice to plaintiff. Referred to in exceptions, at page 32.

*(Copy of the foregoing assigment, with a written notice at the foot thereof. Referred to in Defendant's 1st Exception,* page 32.)

Whereas I, Jonathan Scholfield, sold a certain real property, in the town of Alexandria, to John Lloyd, by which contract and sale said Lloyd was bound to pay half annually to William S. Moore the sum of two hundred and fifty dollars, making the sum of five hundred dollars per annum. And whereas I have legally noticed the said John Lloyd to cease paying the said annuity, claiming the principal sum of five thousand dollars, for the benefit of my creditors, when the suit now pending is ended, all which will more fully appear by reference to suit in the circuit court of the United States for the county of Alexandria, District of Columbia, between John Lloyd and said William S. Moore. And should the said Lloyd be released from paying the said annuity of five hundred dollars as aforesaid, I do hereby assign, for value received, one full fifth part thereof to Thomas K. Beale; as witness my hand and seal this 18th day of November, 1826.

(Signed) JONA. SCHOLFIELD. [SEAL.]

Test:
SAMUEL W. SCHOLFIELD,
WILLIAM J. BALL.

Mr. JOHN LLOYD: Please to take notice that the above is a copy of an assignment from Jonathan Scholfield, in my favor, which I now hold; and, in conjunction with said Scholfield, forbid the payment of the annuity above to said Moore.

Yours, &c.,
THOMAS K. BEALE.

FAIRFAX COUNTY, *to wit:*

Personally appeared before the subscriber, a justice of the peace for the county aforesaid, John Beale, and made oath that he delivered to John Lloyd on this day a true copy of the within assignment and notice.

Given under my hand, this 20th day of November, 1826.

THS. MOSS.

(No. 5.)

Deed from Scholfield to Beale. Referred to in defendant's exceptions, page 32.

*(Deed of assignment from Scholfield to Beale. Referred to in Defendant's first Exception,* page 32.)

This indenture, made and entered into this twentieth day of November, 1826, between Jonathan Scholfield of the

county of Alexandria, District of Columbia, of the one part, and Thomas K. Beale, of the county of Fairfax, State of Virginia, of the other part. Whereas the said Scholfield stands justly indebted to the said Beale to an amount that he is now unable to discharge, and being desirous to discharge the same as far as the peculiarity of his situation will enable him; and whereas a certain John Lloyd of the county of Fairfax, State of Virginia, under a certain contract made and entered into between the said Lloyd and Scholfield, was bound to pay semi-annually to one William S. Moore the sum of two hundred and fifty dollars, making the sum of five hundrod dollars per annum, as an annuity reserved upon the real property conveyed by said Scholfield to Lloyd in the contract aforesaid; and whereas the said Scholfield has given to the said Lloyd legal notice to cease paying the said annuity to said Moore, the said Scholfield claiming the sum of five thousand dollars out of the said annuity for the benefit of his creditors, as will more fully appear by reference to a certain suit now pending in the circuit court of the United States for the county of Alexandria, between John Lloyd and William S. Moore.

Now this indenture witnesseth that the said Scholfield, as well for and in consideration of the premises as of the sum of one dollar to him in hand paid by the said Beale, have bargained, sold, aliened, transferred, and assigned, and by these presents doth bargain, sell, alien, transfer, and assign to the said Beale, his heirs and assigns, all the right, title, and interest which he said Scholfield may have in and to one fifth part of the annuity aforesaid at this time, or which may be determined to be coming to him the said Scholfield under the suit aforesaid, to have and to hold the same to him the said Beale, and his heirs and assigns for ever, with all the right and power of reserving the same that would have belonged to the said Scholfield, warranting and defending the said Beale, his heirs and assigns, in and to the same, from the claim or claims of him the said Scholfield, his heirs, executors, and administrators, and all and every one who may claim by, from, or under him the said Scholfield or his heirs.

In testimony whereof, they the said Scholfield and said Beale have hereunto signed their names and affixed their seals the day and year first above written.

JONA. SCHOLFIELD. [SEAL.]
THOS. K. BEALE. [SEAL.]

Signed, sealed, acknowledged, and delivered in the presence of
JAMES FRASER,
JOSEPH FRASER,
SAMUEL W. SCHOLFIELD.

(No. 6.)

Jonathan Scholfield's discharge under the insolvent law. Referred to in exceptions at page 32.

*(Insolvent discharge of Jonathan Scholfield, in Fairfax county, State of Virginia. Referred to in Defendant's 1st Exception,* page 32.*)*

VIRGINIA, FAIRFAX COUNTY, *sct.*

*The Commonwealth of Virginia to the Sheriff of Fairfax county,* GREETING:

We command you to take Jonathan Scholfield if he be found within your bailiwick, and him safely keep so that you have his body before the judge

of our superior court of law for the county of Fairfax, at the clerk's office of the said superior court, on the first day of May term next, to satisfy Thompson Simpson the sum of one thousand two hundred and fifteen dollars and eighty-four cents, with legal interest thereon, from the 6th day of March, 1819, until paid; also ten dollars and thirty-three cents which the said Thompson, late in our superior court of law for the county of Fairfax, recovered against him, as well for debt as for his costs by him in that behalf expended. Whereof the said Jonathan Scholfield is convict, as appears to us of record; and have then and there this writ.

Witness, William Moss, clerk of the said court, this 11th day of May, 1822, and in the 46th year of the Commonwealth.

WM. MOSS.

Which said execution is endorsed as follows: Executed and in custody when the defendant took the oath of insolvency.

CHARLES RADCLIFF, *D. Shff., for*
SPENCER JACKSON, *Shff.*

*To the Jailor of Fairfax county:*

You are hereby commanded to bring before the court of Fairfax county, now sitting, the body of Jonathan Scholfield, alleged to be an insolvent debtor, and this shall be your authority for doing so. Certify the cause of his imprisonment.

Witness my hand and seal, this 20th day of May, 1822.

THO. MOSS. [SEAL.]

I certify that Jonathan Scholfield is in my custody, on an execution in the name of Thompson Simpson, for the sum of one thousand two hundred and fifteen dollars and eighty-four cents, with legal interest thereon, from the 6th March, 1819, till paid; and ten dollars and thirty-three cents, and sheriff's commission, and for no other cause. The prisoner Jonathan Scholfield I have now in court.

C. RADCLIFF, *D. S. for*
SPENCER JACKSON.

At a court continued and held for Fairfax county, the 20th day of May, 1822.

Jonathan Scholfield, a prisoner in execution at the suit of Thompson Simpson, having remained in custody for some days, and being this day brought before the court by virtue of a warrant obtained for that purpose, and having delivered in a schedule of his estate subscribed by him, and executed a deed to the sheriff of Hampshire county for the land contained in the same, and in open court taken the oath prescribed by law, for the relief of insolvent debtors, it is ordered that he be discharged out of custody if detained for no other cause.

A copy. Test:

WM. MOSS.

The following notice and schedule are filed with the papers, viz.:

THOMPSON SIMPSON: Please take notice that I shall apply to the honorable court of Fairfax county this day, between the hours of three and six o'clock, to be admitted to the benefit of the act of insolvency agreeably to law.

JONA. SCHOLFIELD.

*May* 20, 1822.

The following is a true copy of the schedule of property given up by Jonathan Scholfield at the suit of Thompson, and referred to in the foregoing order of court, viz:

| | |
|---|---|
| Walter Wilson's note for | $35 00 |
| Bushrod Washington, balance on note | 3 15 |
| John Hune, jr., note | 15 42 |
| Matthew Lampkin, balance on note | 33 00 |
| James McDonal's note | 66 73 |
| Davis Bouie, note | 48 55 |
| Elisha Jewell, note | 87 85 |
| John Spencer, balance of note | 20 08 |
| Mary Spence, note | 6 06 |
| George Mazingo | 16 43 |
| Francis Hawke | 83 00 |
| Thomas Lokey | 5 00 |
| Kellan, note | 1 88 |
| John Smith's note | 17 50 |
| David Cooper, note | 16 33 |
| Edward Langley, note | 20 00 |
| Talbot and Hall, draft on Wm. Groseman | 10 19 |
| All my interest in John Lore's note in the hands of Benona Harrison for | 1,000 00 |

All the balance due on book account.

All my interest and claim to one thousand and fifty acres of land in the county of Hampshire, State of Virginia, on the south branch of Potomac river, the same being one undivided third part to be conveyed by John Weaver.

A copy. Test: WM. MOSS.

THE COMMONWEALTH OF VIRGINIA, *to wit:*

I, William Moss, clerk of the county court of Fairfax, in the Commonwealth aforesaid, do hereby certify, that foregoing are true copies of the execution and papers filed in the suit of Thompson Simpson against Jonathan Scholfield, under which the said Jonathan Scholfield took the oath of insolvency.

In testimony whereof I have hereto set my hand and affixed
[SEAL.] the seal of the said county, this 7th day of June, 1832, and in the 56th year of the Commonwealth.

WM. MOSS.

FAIRFAX COUNTY, *to wit:*

I, Robert Radcliff, a presiding justice of the peace, in and for the county aforesaid, do hereby certify that William Moss, whose name appears to the foregoing certificate, is clerk of the said court, and that his attestion as clerk is in due form of law.

Given under my hand and seal, this 7th day of June, 1832.

ROBT. RADCLIFF. [SEAL.]

(A.)

*(Release from Scholfield to Plaintiff. Referred to in Defendant's 1st bill of Exceptions,* page 33.)

Release from Scholfield to plaintiff. Referred to in defendant's 1st bill of exceptions, page 33.

Whereas it is supposed that I, Jonathan Scholfield, of the county of Alexandria, and District of Columbia, may have an interest in a certain suit now pending in the circuit court of the District of Columbia for the county of Washington, in the name of John Lloyd against Charles Scott, as bailiff of William S. Moore, in a certain writ of replevin, or in a certain annuity or rent, purporting to have been granted by me to the said William S. Moore, and charged on certain brick buildings situated on the east side of Washington street, and on the north side of Duke street, in the said town of Alexandria, or in the said buildings on which the same is so charged, or in and to the sum of money secured, or intended to be secured, to the said William S. Moore, by my deed of indenture bearing date the eleventh day of June, 1814, and hereto annexed.*

Now know ye that in consideration of the sum of five thousand dollars released to me by the said John Lloyd, out of a debt due from me to the said Lloyd, and for other good and valuable considerations, me thereunto moving, I do hereby grant, bargain, and sell, assign, transfer, and set over to him the said John Lloyd, all my right, title, and interest, which I have or may hereafter have in the said suit, or which may arise, or hereafter arise to me from the decision of the said suit, or which I have in the said annuity or rent charge, or which I may hereafter have, in case the said John Lloyd should succeed in the said suit, or which I now have, or may hereafter have to the brick buildings upon which the said annuity or rent charge is secured, and in and to all and every of the said premises or either of them. And I do hereby further release and discharge the said John Lloyd from all covenants and obligations, expressed or implied, arising out of my deed of assignment of the said brick buildings and premises to him, bearing date the ninth day of October, 1816, (and also hereunto annexed,†) and also from all claims, demands, actions, or causes of action, which now exist, and which may hereafter arise or accrue to me, under and by virtue of the said deed of the 9th of October, 1816, or the preceding deed herein before referred to.

In witness whereof, I have hereunto set my hand and affixed my seal, this 13th day of June, 1831.

JONA. SCHOLFIELD. [SEAL.]

Sealed and delivered in presence of
EDM. I. LEE.

(B.)

*(Release from Scholfield to Plaintiff, dated 25th April, '28. Referred to in Defendant's 1st bill of Exceptions,* page 33.)

Release from Scholfield to plff., dated 25th April, 1828. Referred to in

Whereas it is supposed that I, Jonathan Scholfield, of the county of Alexandria, and District of Columbia, may have an interest in a certain suit now pending in the circuit court of the District of Columbia and county of Alexandria, in the

*Copied at page 85. †Copied at page 60.

exceptions, page 33.

name of John Lloyd against Charles Scott, as bailiff of William S. Moore, on a certain writ of replevin, or in a certain annuity or rent, purporting to be granted to said William S. Moore by me, and charged on certain three story brick tenements, situate on the east side of Washington street, and on the north side of Duke street, in the town of Alexandria, or in the said tenements on which the same is so charged, or in or to the sum of money thereby secured, or intended to be secured.

Now know ye that I, the said Jonathan Scholfield, have granted, released, surrendered, assigned and set over, and by these presents do, for myself, my heirs, executors, and administrators, freely and absolutely, grant, release, surrender, assign, and set over, unto the said John Lloyd, his heirs, executors, administrators, and assigns, all the right, title, interest, and estate whatsoever, which I the said Jonathan, or my heirs, executors, or administrators, might, can, shall, or my have or claim, into to the said suit, annuity, rent, or tenements, and in and to all sum or sums of money thereon secured or intended to be secured, and in and to all and every of the said premises or either of them. And thereof, and therefrom, and of and from all actions, suits, and demands; which I, my heirs, executors, or administrators, may have concerning the same, do hereby for ever acquit and discharge the said John Lloyd, his heirs, executors, and administrators, by these presents.

In testimony whereof, I have hereunto set my hand and seal, this 25th day of April, 1828.

JONA. SCHOLFIELD. [SEAL.]

Signed, sealed, and delivered in presence of
SIDNEY W. SMITH,
EDM. I. LEE.

(C.)

Release from Beale and McRae to Scholfield. Referred to in exceptions, at page 33.

*(Release from Beale and McRae to Scholfield, same date. Referred to in Defendant's 1st Exception,* page 33.)

Whereas Jonathan Scholfield stands indebted to us, Thomas K. Beale and James M. McRae, of the town of Alexandria, in the District of Columbia, to wit, in or about the sum of two thousand dollars, and we have agreed absolutely to discharge and release the said Jonathan from the payment of the sum of nine hundred and fifty dollars, a part thereof.

Now know ye that we the said Thomas K. Beale and Jame M. McRea have and do hereby release, surrender, assign, and set over, and by these presents do, for ourselves, our heirs, executors, administrators, and assigns, release, surrender, assign, and set over, unto the said Jonathan Scholfield, his executors, administrators, and assigns, the said sum of nine hundred and fifty dollars, part of the debt aforesaid; and we do for ever discharge him the said Jonathan, his executors and administrators, from the payment of the same, or any part thereof.

As witness our hands and seals, this 25th day of April, 1828.

THOS. K. BEALE. [SEAL.]
JAS. M. McRAE. [SEAL]

Signed, sealed, and delivered in the presence of
SIDNEY W. SMITH,
EDM. I. LEE.

(D.)

*(A release from Joseph Smith to said Scholfield, same date. Referred to in Defendant's 1st Exception,* page 33.)

Release from J. Smith to Scholfield. Referred to in exceptions, page 33.

Whereas Jonathan Scholfield stands indebted to me, Joseph Smith, of the town and county of Alexandria, in the District of Columbia, in the sum of three thousand dollars, by two judgments in the circuit court of Alexandria, District of Columbia, with cost and interest, I do hereby agree absolutely to discharge and release the said Jonathan Scholfield from the payment of eleven hundred and fifty dollars.

Now know ye that I, the said Joseph Smith, have released and surrendered, assigned and set over, and by these presents do for myself, my executors, administrators and assigns, release and surrender, assign and set over, unto the said Jonathan Scholfield, his executors, administrators and assigns, the sum of eleven hundred and fifty dollars, a part of the debt aforesaid due me, and do for ever discharge him the said Jonathan Scholfield, his heirs, executors and administrators, for the payment of the same or any part thereof: as witness my hand and seal this 25th day of April, 1828.

JOSEPH SMITH. [SEAL.]

Signed, sealed, and delivered in the presence of
SIDNEY W. SMITH.

(E.)

*(A release from William Veitch and Benoni Wheat, to said Scholfield, same date. Referred to in Defendant's 1st Exception,* page 33.)

Release from W. Veitch and B. Wheat, to Scholfield. Referred to in exceptions, page 33.

Whereas Jonathan Scholfield stands indebted to us, William Veitch and Benoni Wheat, formerly trading under the firm of William Veitch and Co., of the town of Alexandria, in the District of Columbia, to wit, in or about the sum of eight hundred dollars, and we have agreed absolutely to discharge and release the said Jonathan Scholfield from the payment of the sum of two hundred and fifty dollars, a part thereof. Now know ye that we, the said William Veitch and Benoni Wheat, have and do hereby release and surrender, assign and set over, and by these presents, do for ourselves, our heirs, executors, administrators and assigns, release, surrender, assign, and set over, unto the said Jonathan Scholfield, his executors, administrators and assigns, the said sum of two hundred and fifty dollars, part of the debt aforesaid. And we do for ever discharge him the said Jonathan, his executors and administrators, from the payment of the said sum, or any part thereof: as witness our hands and seals, this 25th day of April, 1828.

WM. VEITCH. [SEAL.]
BENONI WHEAT. [SEAL.]

Signed, sealed, and delivered in the presence of
JAS. H. ALLSTON,
EDM. I. LEE.

(F.)

*(Agreement of Plaintiff (same date) to secure to the persons therein named certain portions of the sum in controversy, upon a certain contingency, &c. Referred to in Defendant's 1st Exception,* page 33.)

Agreement of plaintiff to secure certain persons, &c. Referred to in exceptions, at page 33.

Whereas a suit is now pending in the circuit court for the county of Alexandria, John Lloyd against the bailiff, Charles Scott, on a writ of replevin, in which Jonathan Scholfield claims to have an interest, and the amount in controversy being five thousand dollars, arrearages, interest, and costs; I hereby agree, in case I succeed in the said suit to the amount in controversy, and hold myself bound to secure satisfactorily on real estate in the town of Alexandria, (which estate is to be kept insured by me until the debts are paid,) to Joseph Smith, the sum of eleven hundred and fifty dollars; to William Veitch and Benoni Wheat, lately trading under the firm of William Veitch and Co., the sum of two hundred and fifty dollars, and to Thomas K. Beale and James M. McRae, the sum of nine hundred and fifty dollars, (they being first duly authorized to receive the said amounts,) in the manner following, to wit: in case of recovery to the full amount as aforesaid, I will secure satisfactorily to the several parties as herein before mentioned, the sums as stated, bearing an interest of six per cent. per annum, after the 1st day of May, 1828, which interest is to be paid annually.

And I further agree to redeem and pay off to the said parties herein mentioned, or to their heirs or assigns, the sums they are hereby severally entitled to receive, at the expiration of ten years from the time the said suit now depending may be decided, reserving to myself the right and privilege of paying off the said principal debt, and all interest that may be due thereon, at any time I may think proper after the date hereof, and fully releasing the securities herein promised. Or in case I should recover a part of the amount in controversy, I hold myself bound to pay to the parties aforesaid, and in manner aforesaid, such proportion as the amount recovered may bear to the amount in controversy, and for the faithful performance of which I hereby bind myself, my heirs and executors.

Witness my hand and seal, this 25th of April, 1828.

JOHN LLOYD. [SEAL.]

Witness present,
SIDNEY W. SMITH.

(G.)

Release from plaintiff to Scholfield. Referred to in exceptions, at page 33.

*(Release from Plaintiff to Scholfield, same date. Referred to in Defendant's 1st Exception,* page 33.)

Whereas Jonathan Scholfield stands largely indebted to me, John Lloyd, of the county of Fairfax, and State of Virginia, to wit, in or about the sum of fifteen thousand dollars, and I have agreed absolutely to discharge and release the said Jonathan from the sum of five thousand dollars, part thereof.

Now know ye that I, the said John Lloyd, have released, surrendered, assigned and set over, and by these presents do for myself, my executors, administrators and assigns, release, surrender, assign and set over, unto the

said Jonathan Scholfield, his executors, administrators, and assigns, the sum of five thousand dollars, part of the debt aforesaid, and do for ever discharge him the said Jonathan, his executors and administrators, from the payment of the same.

JOHN LLOYD. [SEAL.]

Signed, sealed, and delivered in the presence of
SIDNEY W. SMITH,
EDM. I. LEE.

*(Deed from Jonathan Scholfield and wife to Wm. S. Moore. Referred to in Plaintiff's pleas,* pages 11, 15, 19, and 21.)

Deed from Scholfield and wife to W. S. Moore. Referred to in plaintiff's pleas.

This indenture, made this eleventh day of June, in the year one thousand eight hundred and fourteen, between Jonathan Scholfield and Eleanor, his wife, of the town of Alexandria, in the District of Columbia, of the one part, and William S. Moore, of the same town, of the other part, witnesses that the said Jonathan Scholfield and Eleanor his wife, in consideration of the sum of five thousand dollars to the said Jonathan Scholfield by the said William S. Moore in hand paid, of which the receipt is hereby acknowledged, have granted, bargained, and sold, and do, by these presents, grant, bargain, and sell to the said William S. Moore, his heirs and assigns, for ever, one certain annuity or rent of five hundred dollars, to be issuing out of and charged upon a lot of ground and four brick tenements and appertenances thereon erected on the east side of Washington street, and the north side of Duke street, in the said town of Alexandria, bounded as follows: beginning at the intersection of the said streets; thence, north on Washington street eighty-seven feet, more or less, to the partition wall between the fourth and fifth tenements from Duke street; thence, east parallel to Duke street, and with the said partition wall one hundred and twelve feet to an alley; thence, with the line of the said alley eighty-seven feet to Duke street; thence, on Duke street west to the beginning; to be paid to the said William S. Moore, his heirs and assigns, by equal half yearly payments of two hundred and fifty dollars, on the tenth day of December and on the tenth day of June for ever hereafter, to hold the said annuity or rent to the said William S. Moore, his heirs and assigns, to his and their only proper use for ever. And the said Jonathan Scholfield, for himself, his heirs, executors, administrators, and assigns, does hereby covenant with the said William S. Moore, his heirs and assigns, as follows, that is to say, that he the said Jonathan Scholfield, his heirs and assigns, will well and truly pay to the said William S. Moore, his heirs and assigns, the said annuity or rent of five hundred dollars by equal half yearly payments on the tenth day of June and on the tenth day of December in each year for ever hereafter, as the same shall become due, and that if the same be not punctually paid, then it shall be lawful for the said William S. Moore, his heirs and assigns, from time to time, on every such default to enter on the premises charged, and to levy by *by* distress and sale of the goods and chattels there found the rent in arrear, and the costs of distress and sale; and if the same shall remain in arrear and unpaid for the space of thirty days after any day of payment as aforesaid, and no distress sufficient to satisfy the same can be found on the premises charged, then it shall be lawful for the said William S. Moore, his heirs and assigns, to enter on the promises charged, and from thence to remove and expel the said Jona-

than Scholfield, his heirs and assigns, and to hold and enjoy the same as his and their absolute estate for ever thereafter. And further, that he the said Jonathan Scholfield is now in his own right seized in fee simple in the premises charged as aforesaid, free from any condition or encumbrance other than such as are specified and provided for in a deed from the said Jonathan Scholfield to Robert I. Taylor, dated the day before the date hereof, and that he the said Jonathan Scholfield, his heirs and assigns, will for ever hereafter keep the buildings and improvements which now are or hereafter may be erected on the premises charged, fully insured against fire in some incorporated insurance office, and will assign the policies of insurance to such trustees as the said William S. Moore, his heirs or assigns, may appoint, to the intent that if any damage or destruction from fire shall happen, the money received on such policies may be applied to rebuilding or repairing the buildings destroyed or damaged. And that he the said Jonathan Scholfield, his heirs and assigns, will execute and deliver any further conveyance which may be necessary more completely to charge the premises before described with the annuity aforesaid, and to carry into full effect the intention of the parties hereto.

And lastly, that he and his heirs will for ever warrant and defend the annuity or rent hereby granted to the said William S. Moore, his heirs and assigns, against any defalcation or deduction for or on account of any act of him, his heirs or assigns.

And the said William S. Moore, for himself and his heirs and assigns, does hereby covenant with the said Jonathan Scholfield, his heirs and assigns, that if the said Jonathan Scholfield, his heirs or assigns, shall at any time after the expiration of five years from the date hereof pay to the said William S. Moore, his heirs or assigns, the sum of five thousand dollars, together with all arrears of rent, and a ratable dividend of the rent for the time which shall have elapsed between the half year's day then next preceding and the day on which such payment shall be made, he the said William S. Moore, his heirs or assigns, will execute and deliver any deed or instrument which may be necessary for releasing and extinguishing the rent or annuity hereby created, which, on such payments being made, shall for ever after cease to be payable.

In testimony whereof, the parties to the indenture have hereto set their hands and seals the day and year first before written.

JONA. SCHOLFIELD. [SEAL.]
ELEANOR SCHOLFIELD. [SEAL.]
WILLIAM S. MOORE. [SEAL.]

Sealed and delivered in the presence of
WM. JOLLIFFE,
HO. C. SCOTT,
THOS. K. BEALE,
BENJN. BADEN.

At a United States' circuit court of the District of Columbia, continued and held for the county of Alexandria, the second day of December, eighteen hundred and fourteen, this deed from Jonathan Scholfield and Eleanor, his wife, to William S. Moore, was proved by the affirmation of William Jolliffe and Thomas K. Beale, and the oath of Benjamin Baden, to be the act and deed of the parties, which, together with a commission and return for the privy examination of Eleanor Scholfield, wife of the said Jonathan, are ordered to be recorded.

Test: G. DENEALE, *Clk.*

DISTRICT OF COLUMBIA, COUNTY OF ALEXANDRIA, *sct.*

*The United States of America to Abraham Faw, Jacob Hoffman, Joseph Dean, and Amos Alexander, and Christ. Neale, gentlemen, justices of the said County of Alexandria,* GREETING:

Whereas Jonathan Scholfield and Eleanor, his wife, by their certain indenture, grant, bearing date the eleventh day of June, 1814, have granted to William S. Moore, his heirs and assigns, one annuity or rent of five hundred dollars charged upon four tenements and lots of ground on the north side of Duke street and on the east side of Washington street, at the intersection of said streets, with the appertenances, situate, lying and being in the town and in the said county of Alexandria; and whereas the said Eleanor cannot conveniently travel to our United States' circuit court of the District of Columbia for the county of Alexandria, to make acknowledgment of the said conveyance, therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Eleanor shall be willing to make before you of the conveyance aforesaid, contained in the said indenture, which is hereunto annexed; and we do therefore desire you, or any two or more of you, personally to go to the said Eleanor, and receive her acknowledgment of the same, and examine her privily and apart from the said Jonathan Scholfield, her husband, whether she doth the same freely and voluntarily, without his persuasions or threats, and whether she be willing the said indenture, together with this commission, shall be recorded in our said court? And when you have received her acknowledgment and examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under your hands and seals, sending then there the said indenture and this writ.

Witness, the Hon. William Cranch, chief judge of our said court, this first day of November, 1814.

G. DENEALE, *C.*

(The certificate of A. Faw and Chr. Neale, two of the justices within named, before whom the acknowledgment of Mrs. Scholfield was taken, is is annexed to the deed, but omitted here to be copied.)

*(Mandate referred to in page 24.)*

Mandate from S. Court, referred at page 24.

UNITED STATES OF AMERICA, *sct.*

Seal of the S. C. of the U. S.

*The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the District of Columbia, holden in and for the County of Alexandria,* GREETING:

Whereas, lately, at a circuit court of the United States for the District of Columbia, holden in and for the county of Alexandria, before you, or some of you, in a cause wherein John Lloyd was plaintiff, and Charles Scott, bailiff of William S. Moore, use of John McKim, jr., was defendant, in an action of replevin, the judgment of the said circuit court was in the following words, viz.: "It is therefore considered by the court that the said John Lloyd take nothing by his writ aforesaid, but for his false clamor therein, be in mercy, and that the said Charles Scott, for the use of the said William

S. Moore, and as his bailiff, go thereof without day, and recover from the plaintiff the sum of one thousand dollars, being double the value of the rent distrained for, with full costs of suit, &c.," as by the imperfection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel; on consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court, with instructions to overrule the demurrer to the second and fourth pleas to permit the defendant to plead, and for such further proceedings as to law and justice may appertain.

*February* 27, 1830.

You therefore are hereby commanded that such further proceedings be had in the said cause as, according to right and justice and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable John Marshall, chief justice of said Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and thirty.

WM. THOS. CARROLL,
*Clerk of the Supreme Court of the United States.*

Deed from J. Scholfield and wife to A. C. Cazenove. Referred to in statement of evidence, page 54-5.

This indenture, made this thirteenth day of June, in the year one thousand eight hundred and fourteen, between Jonathan Scholfield and Eleanor, his wife, of the one part, of the town of Alexandria, in the District of Columbia, and Anthony Charles Casenove, of the same town, of the other part, witnesses that the said Jonathan Scholfield and Eleanor, his wife, in consideration of the sum of two thousand five hundred dollars to the said Jonathan in hand paid by the said Anthony Charles Cazenove, of which the receipt is hereby acknowledged, have granted, bargained, and sold, and do by these presents grant, bargain, and sell unto the said Anthony Charles Casenove, one certain annuity or yearly rent of two hundred and fifty dollars, to be paid to the said Anthony Charles Casenove, his heirs and assigns, by half yearly instalments of one hundred and twenty-five dollars each, for ever, that is to say, the sum of one hundred and twenty-five dollars on the thirteenth day of December, and the same sum on the thirteenth day of June, in each year, to be issuing out of, and charged upon, two brick tenements and lots of ground on the east side of Washington street, between Prince and Duke streets, in the town of Alexandria aforesaid, which said two tenements lots of ground are bounded as follows: beginning on Washington street, a point equidistant from Prince and Duke streets; thence, south on Washington street to the south wall of the second tenement, now occupied by said Jonathan Scholfield; thence, east parallel to Duke street to an alley eleven feet wide; thence, north on the alley and parallel to Washington street to a point equidistant from Prince and Duke streets; thence, west to the beginning;

the front on Washington street being supposed to be about forty-four feet, and the depth about one hundred and twelve feet five inches, be the same however more or less, to have and to hold the said annuity or rent to the said Anthony Charles Casenove, his heirs and assigns, to his and their only proper use for ever. And the said Jonathan Scholfield, for himself, his heirs, executors, administrators, and assigns, does hereby covenant with the said Anthony Charles Casenove, his heirs and assigns, that he the said Jonathan Scholfield, his heirs and assigns, will well and truly satisfy and pay the said annuity or rent, as the same shall become due; and that if the said rent should not be punctually paid on the days it shall become payable, then that it shall be lawful for the said Anthony Charles Casenove, his heirs and assigns, from time to time, on each and every default, to enter on the premises charged with the payment of the said rent, and levy by distress and sale of the goods and chattels there found, the rent so in arrear, and costs of such distress and sale; and that if the said rent, or any part thereof, shall at any time hereafter remain in arrear and unpaid for the space of thirty days after any day of payment as aforesaid, and no distress sufficient to satisfy the rent in arrear and the costs of distress and sale can be found on the premises charged, then it shall be lawful for the said Anthony Charles Casenove, his heirs and assigns, to enter on the premises before described, and from thence to expel and remove the said Jonathan Scholfield, his heirs and assigns, and for ever thereafter to occupy and enjoy the said premises, as the absolute estate of him the said Anthony Charles Cazenove, his heirs and assigns; and the said Jonathan Scholfield, for himself, his heirs, executors, and administrators, does hereby further covenant with the said Anthony Charles Casenove, his heirs and assigns, that he the said Jonathan Scholfield, is now in his own right, seized of a good, sure, and indefeasible estate of inheritance in fee simple in the premises aforesaid, free from all encumbrances, except an annuity of fifty dollars, payable to the assignee of William Thornton Alexander in fee, and an annuity of two hundred dollars for life, payable to Mrs. Mary Piercy, and charged on an half acre lot, of which the premises before described are part; which said annuity of two hundred dollars shall be levied on the residue of the said half acre, and shall never be demand from the premises hereby charged, or the tenants thereof, or of any part thereof; and further, that he the said Jonathan Scholfield, his heirs, executors, administrators, and assigns, will for ever hereafter keep the buildings and tenements hereby charged, or which may at any time hereafter be placed on the said lots, on which the said tenements stand, fully insured in an insurance office incorporated against destruction by fire; and that the policies of insurance shall, from time to time, at the request of the said Anthony Charles Casenove, his heirs and assigns, be assigned to such trustee as he or they shall name, and in case of loss and destruction by fire, the money received on such policies of insurance shall be applied to repair or replace the buildings *insured* or destroyed, unless the said Jonathan Scholfield, or his heirs or assigns, shall think proper to pay to the said Anthony Charles Casenove, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and a ratable dividend of the rent for the time which shall have elapsed from the last half year's day to such day of payment, on which payment being made the said policies and the money received thereon, shall be delivered and paid to the said Jonathan Scholfield, his heirs and assigns, and the rent hereby granted shall cease; and further, that the said Jonathan Scholfield, and his heirs, will execute and deliver all

further assurances and conveyances, which may be necessary more fully to carry into effect, the intention of the parties hereto; and will for ever warrant and defend the annuity or rent hereby granted to the said Anthony Charles Casenove, his heirs and assigns, against the claims and demands of all persons whatsoevor; provided always, and it is hereby agreed between the parties hereto, that if the said Jonathan Scholfield, his heirs or assigns, shall, at any time after the date hereof, pay to the said Anthony Charles Casenove, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and ratable dividend of rent, for the time which shall have elapsed from the last half year's day to the day of such payment, then this indenture shall become void, and the annuity or rent hereby granted, shall cease and determine; and the said Anthony Charles Cazenove, his heirs and assigns, will execute all deeds of conveyance or release which may be necessary to extinguish the same.

In witness whereof, the parties to this indenture have hereto set their hands and seals, the day and year first before written.

JONA. SCHOLFIELD. [SEAL.]
ELEANOR SCHOLFIELD. [SEAL.]
ANT. CHS. CASENOVE. [SEAL.]

Sealed and delivered in the presence of
JOHN WHITELEGS,
ELIAS B. SMITH,
HOL. SCOTT,
ROBERT H. MILLER,
ROBT. GRAY.

Deed from J. Scholfield and wife to W. Paton. Referred to in statement of evidence at pages 54 and 55.

This indenture, made this twenty-fourth day of June, in the year one thousand eight hundred and fourteen, between Jonathan Scholfield and Eleanor, his wife, of the town of Alexandria, in the District of Columbia, of the one part, and William Paton, of the same town, of the other part, witnesseth, that the said Jonathan Scholfield and Eleanor, his wife, in consideration of the sum of two thousand five hundred dollars to the said Jonathan in hand paid by the said William Paton, of which the receipt is hereby acknowledged, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, unto the said William Paton, one certain annuity or yearly rent of two hundred and fifty dollars, to be paid to the said William Paton, his heirs and assigns, by equal half yearly payments for ever, that is to say, the sum of one hundred and twenty-five dollars on the twenty-fourth day of December, and the same sum on the twenty-fourth day of June, in each year, to be issuing out of and charged upon, two tenements and lots of ground on the east side of Washington street, between Prince and Duke streets, in the town of Alexandria; the first of which said tenements and lots of ground is bounded as follows: beginning on the south side of a three feet alley leading from Washington street to an eleven feet alley; thence, south on Washington street twenty-three feet to the partition wall, dividing said tenement from that next, and joining to the south; thence, east parallel to Duke street, one hundred and twelve feet five inches to the said eleven feet alley; thence, north on the said alley twenty-three feet to the said three feet alley; thence, west on said alley to the beginning: the second tenement and lot of ground bounded as follows: beginning on the north side of said three feet alley;

thence north, on Washington street twenty-two feet to a partition wall dividing said tenement from that next adjoining to the north; thence, east parallel to Duke street one hundred and twelve feet five inches to the said eleven feet alley; south on the said alley twenty-two feet, west to the beginning. To have and to hold the said annuity or rent to the said William Paton, his heirs and assigns, to his and their only proper use for ever. And the Jonathan Scholfield, for himself, his heirs, executors, administrators, and assigns, does hereby covenant with the said William Paton, his heirs and assigns, that he the said Jonathan Scholfield, his heirs and assigns, will well and truly satisfy and pay the said annuity or rent as the same shall become due; that if the said rent should not be punctually paid on the days it shall become payable, then that it shall be lawful for the said William Paton, his heirs and assigns, from time to time, on each and every default, to enter on the premises charged with the payment of said rent, and levy by distress and sale of the goods and chattels there found the rent so in arrear, and the costs of such distress and sale; and that if the said rent, or any part thereof, shall, at any time hereafter, remain in arrear and unpaid for the space of thirty days after any day of payment as aforesaid, and no distress sufficient to satisfy the rent in arrear, and the costs of distress and sale can be found on the premises charged, then it shall be lawful for the said William Paton, his heirs and assigns, to enter on the premises before described, and from thence to expel and remove the said Jonathan Scholfield, his heirs and assigns, and for ever thereafter to occupy and enjoy the said premises, as the absolute estate of him the said William Paton, his heirs and assigns. And the said Jonathan Scholfield, for himself, his heirs, executors, and administrators, does hereby further covenant with said William Paton, his heirs and assigns, that he the said Jonathan Scholfield is now in his own right seized of a good, sure, and indefeisible estate of inheritance in fee simple in the premises aforesaid, free from all encumbrances; and further, that he the said Jonathan Scholfield, his heirs, executors, administrators and assigns, will for ever hereafter keep the buildings and tenements hereby charged, or which may at any time hereafter be placed on the said lots of ground on which the said tenements stand, fully insured in an incorporated insurance office against destruction by fire, and that the policies of insurance shall, from time to time, at the request of said William Paton, his heirs or assigns, be assigned to such trustees as he or they shall name; and in case of loss and destruction by fire, the money received on such policies of insurance shall be applied to repair or replace the buildings injured or destroyed, unless the said Jonathan Scholfield, or his heirs or assigns, shall think proper to pay the said William Paton, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and a ratable dividend of the rent for the time which shall have elapsed from the last half year's day to such day of payment; on which payments being made the said policies, and the money received thereon, shall be delivered or paid to the said Jonathan Scholfield, his heirs or assigns, and the rent hereby granted shall cease. And further, that the said Jonathan Scholfield, and his heirs, will execute and deliver all further assurances and conveyances which may be necessary more fully to carry into effect the intention of the parties hereto, and will for ever warrant and defend the annuity or rent hereby granted, to the said William Paton, his heirs and assigns, against the claims and demands of all persons whatsoever: Provided always, and it is hereby agreed between the parties hereto, that if the said

Jonathan Scholfield, his heirs or assigns, shall at any time pay to the said William Paton, his heirs or assigns, the sum of two thousand five hundred dollars, and all arrears of rent, and a ratable dividend of rent for the time which shall have elapsed from the last half year's day to the day of such payment, then this indenture shall become void, and the annuity or rent hereby granted shall cease and determine. And the said William Paton, his heirs and assigns, will execute and deliver all deeds of conveyance or release which may be necessary to extinguish the same.

In witness whoreof, the parties to this indenture have hereto set their hands and seals, the day and year first before written.

JONA. SCHOLFIELD. [SEAL.]
ELEANOR SCHOLFIELD. [SEAL.]

Sealed and delivered in the presence of
THOMAS K. BEALE,
HO. C. SCOTT,
ELIAS B. SMITH.

The foregoing deeds truly copied from the records of my office.
Test:

EDM. I. LEE, *C. C.*

Test:

WM. BRENT, *Clk.*

Clerk's certificate. And whereas, afterwards, to wit, on the seventh day of January, in the year of our Lord one thousand eight hundred and thirty-four, the said Charles Scott, as bailiff of William S. Moore, by his attorney aforesaid, produced and filed in court here the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name
[SEAL] and affixed the public seal of the said circuit court for the county aforesaid, this twenty-ninth day of January, Anno Domini 1834.

W. BRENT. *Clk.*

Copy appeal bond. Know all men by these presents, that we, John McKim, jr., of Baltimore, and Robert I. Taylor, of Alexandria, (administrators of W. S. Moore, deceased,) are held and firmly bound unto John Lloyd in the full and just sum of two hundred dollars, current money, to be paid to the said John Lloyd, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-three.

Whereas, lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit depending in the said circuit court, wherein the said John Lloyd was plaintiff, and Charles Scott, bailiff of William S. Moore, was defendant, judgment was rendered

against the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation to the said John Lloyd directed, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of January next.

Now, the condition of the above obligation is such, that if the said Charles Scott, bailiff of William S. Moore, shall prosecute said writ to effect, and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue in law.

JNO. McKIM, Jr. [SEAL.]
R. I. TAYLOR, *Adr. of* [SEAL.]
W. S. MOORE.

Signed, sealed, and delivered in presence of
WM. H. MARRIOTT, *as to*
J. McKIM, jr.
PHINEAS JANNEY, *to*
R. I. T.

Approved:

J. S. MORSELL,
*Asst. Judge C. Co. D. Ca.*

Test: W. BRENT, *Clk.*

*January* 7, 1834.

UNITED STATES OF AMERICA, *sct.* Writ of error.

*The President of the United States to the Judges of Circuit Court of the United States for the District of Columbia, sitting for the county of Washington,* GREETING:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between John Lloyd, plaintiff, and Charles Scott, bailiff of William S. Moore, defendant, a manifest error hath happened to the great damage of the said Charles Scott, bailiff of William S. Moore, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in said Supreme Court to be then and there held; and that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and, according to the laws and custom of the United States, should be done.

Witness, the hon. John Marshall, chief judge of said Supreme Court of the United States.

Issued this seventh day of January, 1834.

WM. BRENT,
*Clk. of C. C. of D. Ca. for County of Washn.*